



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR-DR, MNR-DR, FFL
For the tenant: CNR

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 9, 2021 (10 Day Notice), for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice.

The tenant and the landlord attended the teleconference hearing and were affirmed. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

Both parties confirmed receiving the application and documentary evidence from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The tenant did not have an email address to provide during the hearing and as a result, the tenant was advised that their decision would be sent to them by regular mail. As the tenant's filing fee was already waived, it will not be considered further in this decision.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to unpaid rent or utilities?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence and reviewed during the hearing. The month-to-month tenancy began on October 1, 2020 and the monthly rent of \$600.00 was due on the first day of each month. The tenant paid a security deposit of \$300.00 at the start of the tenancy, which the landlord continues to hold. The parties agreed that the tenant rents a room upstairs in a home and that the landlord does not reside in the rental home.

A copy of the 10 Day Notice was submitted in evidence. The tenant confirmed that they received the 10 Day Notice on July 9, 2021, the date in which the landlord testified to personally serving the 10 Day Notice on the tenant. The 10 Day Notice is dated July 9, 2020. The 10 Day Notice indicates that \$600.00 in rent was owed as of July 1, 2021. The tenant affirmed that they paid July 2021 rent on July 19, 2021, while the landlord affirmed that tenant paid July 2021 rent on July 20, 2021.

The landlord confirmed that the tenant has paid money for use and occupancy for November 2021 and does not owe unpaid rent as of the date of the hearing, November 15, 2021. As a result, the parties were advised that the earliest order of possession date would be November 30, 2021 at 1:00 p.m. The tenant applied to dispute the 10 Day Notice on July 12, 2021. The effective vacancy date listed on the 10 Day Notice was July 19, 2021.

The tenant claims they had a mutual agreement with the landlord, which the landlord denied. The landlord was asked if they wanted to continue the tenancy, and the landlord replied, "no."

The tenant continued to occupy the rental unit. The landlord seeks an order of possession and the filing fee.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice under the Act, the onus of proof is on the tenant to provide sufficient evidence that rent was paid. The tenant confirmed that they paid rent to the landlord on July 19, 2021, which I find was after the 5-day timeline listed on the 10 Day Notice, which would have been July 14, 2021 and that the tenancy ended on the effective vacancy date listed on the 10 Day Notice, which was July 19, 2021. Section 26 of the Act requires that rent be paid on the date in which it is due. Therefore, I find the tenant breached section 26 of the Act as a result as rent for July 2021 was not paid until at least July 19, 2021. For the 10 Day Notice to have no effect, the tenant would have had to pay the full amount of rent within 5 days of July 9, 2021 which was July 14, 2021 and the tenant confirmed they did not pay the rent until July 19, 2021. Given the above and pursuant to section 46 of the Act, I dismiss the tenant's application **without leave to reapply**, due to **insufficient evidence**.

I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act.

As the landlord confirmed that rent was paid late but is no longer owing as of the date of the hearing, I do not grant the landlord a monetary order for unpaid rent.

Order of Possession – Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I

must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **November 30, 2021 at 1:00 p.m.** as money has been paid for use and occupancy of the rental unit for November 2021. I find the landlord has not reinstated the tenancy and I find the tenancy ended on July 19, 2021, which is the effective vacancy date listed on the 10 Day Notice and has passed.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. I authorize the landlord to deduct \$100.00 from the tenant's security deposit of \$300.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 38, 67 and 72 of the Act. Pursuant to sections 38 and 62(3) of the Act, I find that the tenant's security deposit balance is \$200.00 effective immediately.

Conclusion

The tenant's application is dismissed without leave to reapply, due to insufficient evidence.

The landlord's application for an order of possession and filing fee is successful. The tenancy ended July 19, 2021. The landlord has been granted an order of possession effective November 30, 2021 at 1:00 p.m. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been authorized to deduct \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 38, 67 and 72 of the Act. The tenant's security deposit balance is \$200.00 effective immediately.

This decision will be emailed to the landlord and sent by regular mail to the tenant. The order of possession will be emailed to the landlord only for service on the tenant. Should the landlord require enforcement of the order of possession, the landlord must first serve the tenant with the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The tenant is cautioned that they could be held liable for all costs related to the enforcement of the order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 15, 2021

Residential Tenancy Branch