



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
Landlord	910048084	OPU, MNRL-S, FFL
Tenant	310057566	CNR, LRE

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed claims for:

- an order of possession for unpaid rent and utilities, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Utilities of \$1,150.00 ("10 Day Notice");
- a monetary order for unpaid rent in the amount of \$1,250.00; and
- recovery of the \$100.00 application filing fee.

The Tenant filed claims for:

- an Order to cancel the 10 Day Notice; and
- suspension or restriction of the Landlord's right to enter.

The Tenant and Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. The Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written 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.

The Landlord said he served the Tenant with his Notice of Hearing documents by registered mail on September 16, 2021; however, the Tenant acknowledged having rejected this mailing. The Landlord said he served the Tenant with his evidentiary submissions by posting it on the door on December 22, 2021. The Tenant denied having received this evidence, as well.

The Landlord served the Tenant with the Notice of Hearing documents and evidentiary submissions in compliance with section 88 of the Act. He provided a Canada Post tracking number for this package, which I checked, and I discovered that the Tenant had refused to accept the package on September 21, 2021. According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlord served the Notice of Hearing to the Tenant on September 21, 2021.

Given the Tenant's refusal of the Landlord's registered mail package, I find it more likely than not that the Landlord did serve the Tenant with his evidentiary submissions by posting them on the door on December 22, 2021; however, I find that it is likely that the Tenant had these documents before him prior to the hearing. I find this evidence was deemed served to the Tenant three days later or on December 25, 2021, pursuant to section 90 of the Act.

The Tenant acknowledged that he failed to serve the Landlord with his Notice of Hearing package and evidentiary submissions. As such, and pursuant to section 62 and Rule 3.1 and 10, I dismiss the Tenant's application without leave to reapply.

Preliminary and Procedural Matters

The Tenants provided their email address in the Application, and they confirmed it in the hearing. The Landlords provided their email address in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party in this way.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss

unrelated disputes contained in a single application. In this case, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a 10 Day Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice at this proceeding. Therefore, the Tenant's other claim is dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2020 and ran to February 28, 2021, and then operated on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$1,100.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$550.00, and no pet damage deposit.

The Landlord submitted a copy of the 10 Day Notice, which was signed and dated August 3, 2021, it has the rental unit address, it was served by being posted on the door on August 3, 2021, and sent by registered mail, which was delivered on August 13, 2021. I find that the 10 Day Notice posted to the door was deemed served three days later or on August 6, 2021, pursuant to section 90 of the Act. The 10 Day Notice has an effective vacancy date of August 13, 2021, which is automatically corrected by section 53 of the Act to August 16, 2021, or ten days after the date the Tenant received the 10 Day Notice.

I asked the Landlord why I should give him an order of possession of the rental unit, and he said the following:

He owes lots of money – no rent for July, so I served the 10 Day Notice in August. When he started the tenancy, he received discounted rent. We told him we were going to raise it in six months and then he failed to pay and is over \$9,000.00 in amount. The property has been damaged.

I advised the Landlord that he had not applied for compensation due to damage to the residential property, therefore, I could not consider that issue.

I then asked the Tenant when he last paid rent, and he said:

I'm not too sure. He just gave me a realization. Where does \$9,000.00 come from?

I've been paying my rent ever since my situation changed. My rent was not paid since the change. I can concur that July and August, maybe even July was paid. Maybe July or August.

Again, I asked the Tenant when he last paid rent, and he replied:

I would have to go and look into it. The same way ... I paid my rent on time until a situation occurred. Basically, CERB was shut off, and I was unable to get steady work. I can't even put food on my table.

I asked the Landlord for the total amount owing in rent from the Tenant, and he provided me with the evidence in the table.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
July 1, 2021	\$1,100.00	\$0.00	\$1,100.00
Aug. 1, 2021	\$1,100.00	\$0.00	\$1,100.00
Sep. 1, 2021	\$1,100.00	\$0.00	\$1,100.00
Oct 1, 2021	\$1,100.00	\$0.00	\$1,100.00
Nov. 1, 2021	\$1,100.00	\$0.00	\$1,100.00
Dec. 1, 2021	\$1,100.00	\$0.00	\$1,100.00
Jan. 1, 2022	\$1,100.00	\$0.00	\$1,100.00
			\$7,700.00

The Tenant did not deny having failed to pay rent in July 2021 through January 2022.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 provides the standard and onus of proof on the parties, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

Based on the evidence before me, I find that the 10 Day Notice is consistent with section 52 of the Act, as to form and content. Further, I find there is undisputed evidence before me that the Tenant owes the Landlord unpaid rent arrears of \$7,700.00, after having failed to pay the Landlord the rent owing from July 2021 through January 2022.

Pursuant to sections 26, 46, and 67 of the Act, I award the Landlord with **\$7,700.00** from the Tenant for unpaid rent arrears.

Pursuant to sections 46 and 55 of the Act, I grant the Landlord an **Order of Possession effective two days** after the Tenant receives the Order.

Given the Landlord's success in this matter, I also award the Landlord with recovery of his **\$100.00** Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$550.00 in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's **\$550.00** security deposit, and I grant the Landlord a **Monetary Order** from the Tenant of **\$7,250.00** for the remaining amount of the awards owing by the Tenant to the Landlord.

The Tenant is unsuccessful in his application, as he failed to provide sufficient evidence to support his claims. I, therefore, dismiss the Tenant's application without leave to reapply, pursuant to section 62.

Conclusion

The Tenant is unsuccessful in his application, as he failed to serve the Landlord with his Notice of Hearing documents and evidentiary submissions. The Tenant's application is dismissed without leave to reapply.

The Landlord is successful in his application, as he provided sufficient evidence to meet his burden of proof in this matter. The Landlord is awarded \$7,700.00 in unpaid rent from the Tenant. The Landlord is also awarded recovery of his \$100.00 application filing fee from the Tenant. I authorize the Landlord to retain the Tenant's \$550.00 security deposit in partial satisfaction of these awards, and pursuant to section 72 of the Act.

The Landlord is granted a **Monetary Order** pursuant to section 67 of the Act for the balance owed him by the Tenant of **\$7,250.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: January 07, 2022

Residential Tenancy Branch