



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KLEINACRES DAIRY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR-MT RP FFT

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2021 (10 Day Notice), for regular repairs to the unit, site or property, and to recover the cost of the filing fee.

The tenant BB (tenant) and the owner of the landlord company, JK (landlord) attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants and the tenants were given an opportunity to ask questions. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord stated that they uploaded documentary evidence, which is incorrect as no documentary evidence was uploaded to the Dispute Management System (DMS) or through a Service BC office. As a result, I have no documentary evidence before me from the landlord.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 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. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition to the above, the parties confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- If no, should the remainder of the application be dismissed?
- Are the tenants entitled to the recovery of the cost of her filing fee under the Act?

Background and Evidence

The tenant confirmed that they vacated the rental unit on March 1 2022, in advance of the hearing date which was held on this date, March 11, 2022. As a result, there was no need to consider any additional evidence as these matters are now moot as the tenancy has ended and the tenant vacated the rental unit.

The parties could not agree on the amount of unpaid rent owing. The landlord originally testified that \$3,100.00 was owing and later changed their testimony to say that over \$8,000.00 was owing, which I will address further below.

Analysis

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

I dismiss the tenant's application to cancel the 10 Day Notice as the tenants have already vacated the rental unit as of March 1, 2022 and since filing their application. The application dismissed without leave to reapply.

I do not grant the filing fee as a result.

Pursuant to section 55(1.1) of the Act in an attempt to address the amount of unpaid rent owing, the parties could not agree. I find the landlord changed their testimony between \$3,100.00 owing and over \$8,000.00 owing. As a result of having no documentary evidence before me to support the exact amount of rent owing, I decline to issue a monetary order as I am not convinced of the actual amount owing. The landlord has liberty to apply for unpaid rent and must provide proof of the amount owing along with a Monetary Order Worksheet to set out for what months of rent the tenant owes.

Conclusion

The application is dismissed without leave to reapply.

The filing fee is not granted.

The landlord is not granted a monetary order due to contradictory testimony. The landlord has liberty to apply for unpaid rent. This decision does not extend any applicable timelines under the Act.

This decision will be emailed to both parties as indicated above.

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: March 11, 2022

Residential Tenancy Branch