



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNR

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on December 13, 2021. The Tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 9, 2021 (the 10 Day Notice), pursuant to the Residential Tenancy Act (the Act).

The signed tenancy agreement submitted into evidence does not name WRA as a party to the agreement. Therefore, pursuant to section 64(3) of the Act, I amend the application to remove WRA as a party. The remaining Landlords, CS and RA, are referred to throughout this decision as the Landlords.

CS and RA attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing. As the Tenant did not attend the hearing at the appointed date and time, I find that the Tenant's application is dismissed without leave to reapply.

Section 55(1) confirms that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant to the landlord an order of possession of the rental unit.

In this case, the Landlords testified that the Tenant packed her belongings and moved out of the rental unit on February 23, 2022. All that has been left behind is garbage and several pieces of furniture. Therefore, I find that the tenancy has ended and decline to issue an order of possession pursuant to section 55(1) of the Act.

Section 55(1.1) confirms that when a tenant's application to cancel a notice to end tenancy for unpaid rent or utilities is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order requiring the payment of the unpaid rent.

In this case, the Tenant's application has been dismissed without leave to reapply. On examination, I find that the 10 Day Notice disputed by the Tenant complies with the form and content requirements of section 52 of the Act. Further, the Landlords provided undisputed testimony, which I accept, that the Tenant did not pay rent when due, as follows:

Rent due date	Rent amount	Amount paid	Outstanding
November 1, 2021	\$2,200.00	\$2,100.00	\$100.00
December 1, 2021	\$2,200.00	\$0	\$2,200.00
January 1, 2022	\$2,200.00	\$0	\$2,200.00
February 1, 2022	\$2,200.00	\$0	\$2,200.00
March 1, 2022	\$2,150.00	\$0	\$2,150.00
TOTAL:			\$8,850.00

The rent reduction effective March 1, 2022 was reflected in a Notice Terminating or Restricting a Service or facility dated February 2, 2022, confirming rent would decrease to \$2,150.00 per month due to the removal of laundry access. This reduced amount was also included on a type-written Statement of Unpaid Rent & Utilities submitted with the Landlords' evidence.

The Landlords also testified the Tenant has not paid utilities. Section 46(6) of the Act confirms that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end the tenancy.

In this case, the tenancy agreement submitted into evidence states: "[t]he Tenant is responsible for the payment of cable TV and a telephone line...[and] understands that review of utility consumption will be done and addition [sic] charges could result." I find that the tenancy agreement is unclear with respect to utility charges which must be paid to the Landlords. Therefore, I find I am unable to confirm that the unpaid utility charges alleged by the Landlords are due and can be treated as unpaid rent for the purposes of section 55(1.1) of the Act.

As the Tenant did not vacate the rental unit until February 23, 2022, I find it reasonable to grant the Landlords a monetary award of \$8,850.00 for unpaid rent to March 31, 2022, in accordance with section 55(1.1) of the Act. The Landlords remain at liberty to apply for other losses to which they may be entitled, including unpaid utilities, at their discretion.

Conclusion

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1.1) of the Act, I grant the Landlords a monetary order of \$8,850.00 for unpaid rent. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision 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 28, 2022

Residential Tenancy Branch