



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, RR, CNR, PSF, OLC, AS**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for damages or compensation pursuant section 67;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- An order allowing the tenant to sublet the rental unit as the landlord’s permission has been unreasonably withheld pursuant to section 65.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by it’s agent, AD (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant’s Notice of Dispute Resolution Proceedings package and stated he had no concerns with timely service of documents.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered. Only the evidence referred to by the landlord was used in this decision.

As the landlord did not attend this hearing, only the primary issue of whether to uphold or cancel the landlord's notice to end tenancy was considered. The remainder of the issues sought by the tenant in his application for dispute resolution were dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The tenants did not attend to present any evidence regarding the merits of their application for me to consider.

The landlord gave the following undisputed testimony. There was an unwritten tenancy agreement between the tenant's mother and a previous owner of the rental unit. The tenant's mother passed away prior November 05, 2021 when the landlord purchased the rental unit. At the time the landlord purchased the unit, the tenant was occupying it.

The landlord tried to get the tenant to sign a new tenancy agreement with him, together with an addendum (presented as evidence by the landlord,) however the tenant refused to sign it. The addendum states the tenant is to pay a flat fee of \$170.00 per month for utilities over the \$1,500.00 monthly rent.

Rent was set at \$1,500.00 per month, payable on the first day of each month. The landlord states there was no security deposit given to him by the previous landlord. On November 21, 2021, the property owner personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities and the landlord's agent attending today's hearing witnessed the service. A copy of the notice was provided as evidence.

The notice states the tenant failed to pay \$1,250.00 rent that was due on November 01, 2021. The landlord says the rent was pro-rated by 5 days because the landlord took

ownership of the rental unit on November 05, 2021. The notice also states the tenant failed to pay utilities in the amount of \$662.56 however the landlord acknowledges this was in the tenant's mother name and the tenant was not responsible for paying it.

Since serving the notice to end tenancy, the tenant has continued to not pay rent. As of the hearing date, the tenant has not paid rent for November through to March 2022. The landlord seeks compensation for these months.

Analysis

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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. Based on the undisputed evidence of the landlord, I find that there was a tenancy agreement between the landlord and the tenant requiring the tenant to pay rent on the first day of the month in the amount of \$1,500.00. I find the tenant had no right to deduct any portion of the rent. The tenants failed to pay the pro-rated \$1,250.00 November rent or rent for the subsequent months until the date of this hearing contrary to section 26 of the Act. Given this finding, I uphold the landlord's notice to end tenancy for unpaid rent or utilities.

Section 55 states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have examined the landlord's notice to end tenancy dated November 21, 2021 and find that it complies with the form and content provisions of section 52 of the Act. Since the effective date stated on the notice to end tenancy has passed, I grant the landlord an Order of Possession effective two days after service upon the tenant.

Section 55(1.1) states that the director must grant an order requiring the payment of unpaid rent the above circumstances. Pursuant this section, I grant the landlord a monetary order as follows:

Item	Amount
Pro-rated November rent	\$1,250.00
December, 2021 rent	\$1,500.00
January, 2022 rent	\$1,500.00
February, 2022 rent	\$1,500.00

March 2022 rent	\$1,500.00
Total	\$7,250.00

The landlord also seeks compensation from the tenant for unpaid utilities. While section 55(1.1) allows an arbitrator to grant an order for unpaid rent when a tenant disputes a notice to end tenancy for unpaid rent, it does not grant the ability to compensate the landlord for unpaid utilities. If the landlord seeks this order, the landlord must file his own application for dispute resolution.

Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$7,250.00**.

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 14, 2022

Residential Tenancy Branch