



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNRL-S, FFL
Tenant: CNR, OLC, RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's Application for Dispute Resolution was made on January 26, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- a monetary order for unpaid rent or utilities;
- an order permitted the Landlord to retain the security deposit in satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was made on January 2, 2022. The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- an order that the Landlords comply with the Act, regulation, and/or the tenancy agreement; and
- an order requiring the Landlord to make repairs to the rental unit, site, or property.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified the Landlord's Notice of Dispute resolution Proceeding and supporting evidence were served on the Tenant by registered mail. The Tenant acknowledged receipt. Further, the Tenant testified the Tenant's Notice of Dispute Resolution Proceeding and supporting evidence were served on the Landlord by registered mail. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of documents during the hearing. I find these documents were sufficiently served pursuant to section 71 of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of proceedings. The parties confirmed they were not recording the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule of Procedure 2.6 permits an arbitrator to dismiss unrelated claims with or without leave to reapply. In this case, I find it appropriate to sever the following requests made by the Tenant:

- an order that the Landlord comply with the Act, regulation, and/or the tenancy agreement; and
- an order requiring the Landlord to make repairs to the rental unit, site, or property.

During the hearing, the Tenant was advised that he would be granted leave to reapply for this relief depending on the outcome. However, in light of my findings below, I find these requests are dismissed without leave to reapply.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?
4. Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began on September 1, 2018. Rent in the amount of \$1,300.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00, which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

The Landlord testified the Tenant did not pay rent when due. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2022, for \$1,300.00 in unpaid rent (the 10 Day Notice). A copy of the 10 Day Notice was submitted into evidence.

The Landlord testified the 10 Day Notice was served on the Tenant in person on January 2, 2022. The Landlord submitted a Proof of Service Notice to End Tenancy document confirming service in this manner was witnessed by DB. The Tenant acknowledged receipt of the 10 Day Notice on January 2, 2022.

The Landlord testified that the Tenant has failed to pay rent totalling \$2,100.00, which was calculated as follows:

Rent due date	Amount due	Rent paid	Outstanding
January 1, 2022	\$1,300.00	\$500.00	\$800.00
February 1, 2022	\$1,300.00	\$800.00	\$500.00
March 1, 2022	\$1,300.00	\$500.00	\$800.00
TOTAL:			\$2,100.00

In reply, the Tenant acknowledged rent has not been paid as alleged by the Landlord. The Tenant advised that he has been out of work but recently started a new job. The Tenant also testified that his wife recently arrived in Canada and that she will be working as well. The Tenant stated that an anticipated tax return of approximately \$4,300.00 will be applied to unpaid rent but that he just needs more time.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms:

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.

The Landlord sought an order of possession. In this case, I find that the 10 Day Notice was served on and received by the Tenant on January 2, 2022. Further, I find the Tenant disputed the 10 Day Notice on time.

Further, based on the undisputed evidence of the parties, I find the Tenant did not pay rent when due and did not have a right under the Act to deduct any rent. Indeed, the Tenant acknowledged that rent of \$2,100.00 is currently outstanding. Therefore, I find the Landlord has established an entitlement to an order of possession which will be effective two days after it is served on the Tenant.

In addition, based on the undisputed evidence of the parties, I find the Landlord has established an entitlement to a monetary for unpaid rent in the amount of \$2,100.00.

Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application. I also find it is appropriate in the circumstance to order that the Landlord is authorized to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$1,550.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$2,100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$650.00)
TOTAL:	\$1,550.00

Conclusion

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

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,550.00. 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