



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR CNC FF

Landlord: OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory to deal with both applications was held, via teleconference, on March 31, 2022.

The Landlord attended the hearing and provided affirmed testimony. However, the Tenant did not. The hearing was by telephone conference and began promptly, as scheduled, at 1:30 PM Pacific Time on March 31, 2022, as per the Notice of a Dispute Resolution Hearing provided to the parties. The line remained open while the phone system was monitored for 40 minutes and the only participant who called into the hearing during this time was the Landlord who was ready to proceed. The Landlord stated that the Tenant continues to occupy the rental unit and not pay rent.

Landlord's application

The Landlord testified that she sent her Notice of Dispute Resolution Proceeding by registered mail on February 11, 2022. The Landlord stated that she also sent her amendment and all evidence to the Tenant by registered mail on March 7, 2022. Tracking information was provided verbally at the hearing and is recorded on the front page of this decision. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received these packages 5 days after they were sent by mail.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Tenant's Application

Since the Tenant failed to attend the hearing, I dismiss the Tenant's application in full, without leave to reapply. The related monetary order and order of possession will be addressed further below as part of the Landlord's application.

Preliminary and Procedural Issues

The Landlord applied for multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues on the Landlord's application, I find the most pressing and related issues in this application are related to the payment/non-payment of rent and the related order of possession. As a result, I exercise my discretion to dismiss, with leave to reapply, the following grounds on the Landlord's application:

- a monetary order for compensation for damage or loss under the *Act* (for any unpaid strata fines, other damage or loss, or further potential accrued unpaid rent beyond March 31, 2022)

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based off a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent in the amount of \$2,000.00 is due on the first day of each month. The Landlord holds a security deposit of \$1,000.00.

The Landlord testified that the Tenant owes \$9,000.00 in unpaid rent as of the time of this hearing, up to and including the end of March 2022. This amount is calculated based on the following unpaid amounts:

- October 2020 - \$1,000.00
- November 2021 - \$2,000.00

- January 2022 - \$2,000.00
- February 2022 - \$2,000.00
- March 2022 - \$2,000.00

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was sent by registered mail to the Tenant on January 20, 2022. Proof of mailing was provided into evidence. The Landlord stated that no rent has been paid since issuing the 10 Day Notice.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant had a balance of unpaid rent in the amount of \$5,000.00 at the time the 10 Day Notice was issued on January 20, 2022. The 10 Day Notice was sent to the Tenant by registered mail on January 20, 2022. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 5 days. I find the tenant is deemed to have received the 10 Day Notice on January 25, 2022.

The tenant had 5 days to pay rent in full or file an application for dispute resolution with a valid reason as to why rent was not paid. I find no evidence that the tenant had any valid reason to withhold rent, and there is not evidence that any rent was paid since the 10 Day Notice was issued. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$9,000.00 in rent, as laid out above.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid Rent up till March 31, 2022	\$9,000.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$1,000.00)
TOTAL:	\$8,100.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$8,100.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 31, 2022

Residential Tenancy Branch