



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 12, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 12, 2022 (the "10 Day Notice"); and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent G.M. attended the hearing at the appointed date and time and provided affirmed testimony. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised relating to service, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties confirmed that the Tenant vacated the rental unit on January 31, 2022 and completed the move out condition inspection of the rental unit on February 1, 2022. Seeing as the tenancy has ended, and the Landlord has gained vacant possession of the rental unit, I find that the Landlord does not require an Order of Possession. As such, I dismiss the Tenant's Application to cancel the 10 Day Notice without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above

finding, I will now turn my mind to whether the Landlord is entitled to a monetary order for unpaid rent, pursuant to section 55 of the *Act*.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

Background and Evidence

The parties testified and agreed that: the tenancy began on January 16, 2021. The Tenant was required to pay rent in the amount of \$2,100.00 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 which the Landlord continues to hold.

The Landlord's Agent testified the Tenant withheld the full amount of rent for January 2022. The Landlord's Agent stated that the Landlord subsequently served the Tenant by email with a 10 Day Notice dated January 12, 2022 with an effective date of January 22, 2022. The Tenant confirmed receipt of the 10 Day Notice. The Tenant confirmed that she withheld January 2022 rent in the amount of \$2,100.00. The Tenant stated that on December 4, 2021 the Landlord had indicated to her via email that he would not be extending the tenancy agreement beyond January 31, 2022 and that the Tenant would be required to move out at the end of January 2022 because the Landlord intended to have a close family member occupy the rental unit.

The Tenant stated that the Landlord would have been required to serve a proper Two Month Notice for Landlord's Use of the Property, however, the parties agreed that no such Notice was served to the Tenant. Instead, the Tenant stated that she had asked to remain in the rental unit until the end of February 2022, however, she complied with the Landlord's request to vacate and found a new accommodation for February 1, 2022. The Tenant stated that she felt entitled to one month of rent for compensation which she would have been provided had the Landlord served the proper Notice to End Tenancy.

The Landlord's Agent stated that the parties had an agreement that the Tenant would occupy the rental unit until the end of February 2022 and that the Tenant would be compensated February 2022 rent. The Landlord's Agent stated that there was a break in communication between the parties and that the Tenant moved out at the end of January 2022 instead. As such, the Landlord is seeking compensation for unpaid January 2022 rent.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

According to Section 55 of the Act: (1) 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:

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**

Section 51(1) of the Act states;

A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

I accept that the parties agree that the Tenant withheld January 2022 rent in the amount of \$2,100.00. I accept that the Landlord did not serve a Two Month Notice to End Tenancy for Landlord's Use to the Tenant. As such, I find that the Tenant is not entitled to compensation relating to a Notice that she was not served with. I find that Tenant provided insufficient evidence to demonstrate the Landlord agreed to compensate the Tenant with one month free rent for January 2022. While the Landlord had offered the Tenant compensation for the month of February 2022, I find the Tenant vacated the rental unit on January 31, 2022, therefore, not accepting the Landlord's offer.

I find that the Tenant had no right to withhold January 2022 rent from the Landlord and has breached Section 26 of the *Act*. In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent for January 2022 in the amount of \$2,100.00. I find it appropriate in the circumstances to order that the Landlord retain the \$1,250.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$850.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$2,100.00
<i>LESS</i> security deposit:	-(<i>\$1,250.00</i>)
TOTAL:	\$850.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$850.00. The monetary order should be served to the Tenant as soon as possible and 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: April 12, 2022

Residential Tenancy Branch