



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: **CNR, FFT, OLC, MNDCT, RP, RR, PSF, LRE, LAT**

Landlord: **OPR-DR, MNR-DR**

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (“the Act”).

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62;
- A monetary order for damages or compensation pursuant section 67;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70; and
- Authorization to change the locks to the rental unit pursuant to section 31.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55; and

- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67.

The tenant did not attend the hearing scheduled for 11:00 a.m. although I left the teleconference hearing connection open throughout the 20 minute hearing for the tenant to call in.

The landlord attended the hearing and was represented by an agent, SW, hereinafter referred to as the landlord. The landlord testified she served the landlord's Notice of Dispute Resolution Proceedings package upon the tenant by posting it to the tenant's door on February 10, 2022. The landlord's witness, NP testified that he accompanied the landlord and assisted her in posting it to the tenant's door on that date. I deem the tenant served with the landlord's Notice of Dispute Resolution Proceedings package on February 13, 2022, three days after it was posted to his door pursuant to sections 89 and 90 of the Act.

The hearing of the landlord's application was conducted in the absence of the tenant in accordance with rule 7.3 of the Residential Tenancy Branch Rules of Procedure which states:

7.3 Consequences of not attending the hearing

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.

Pursuant to Rule 7.3, I dismiss the tenant's application without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on September 1, 2021. There was no written tenancy agreement, as the tenant was referred to the landlord by a family friend. Rent was set at \$700.00 per month payable on the first day of each month and the landlord collected a \$350.00 security deposit at the commencement of the tenancy which he continues to hold.

The tenant paid rent in the amount of \$700.00 for September, and didn't pay October's rent until October 28th. The tenant did not pay rent for the months of November, December or January.

The landlord's witness, NP testified that on January 12, 2022 he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting a copy to the tenant's door. A copy of the Notice was provided as evidence. It states that the tenant failed to pay rent in the amount of \$2,100.00 that was due on January 17, 2022. It also states that the tenant failed to pay utilities in the amount of \$235.00 following written demand on January 17, 2022 but acknowledges that there was no written agreement that the tenant pay utilities, only verbal.

The landlord testified that after serving the tenant with the notice to end tenancy, the tenant did not pay the \$2,100.00 arrears in rent, nor did the tenant pay rent for the months of February, March or April. The landlord seeks to amend his application for monetary order to collect rent for those months as well.

Analysis

The tenant is deemed served with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on January 15, 2022, three days after a copy was posted to his door, pursuant to sections 88 and 90 of the Act.

Although the tenant filed an application to dispute the landlord's notice to end tenancy within 5 days as required under section 46 of the Act, the filing of the dispute only allows the tenant the opportunity to provide reasons as to whether they had any right to deduct any portion of the rent or if there was a legitimate reason for not paying rent when it was due.

Section 26 of the *Act* is clear, 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 the tenant did not have any right under the Act to deduct any portion of the rent and failed to pay rent when it was due. For this reason, I uphold the landlord's notice to end tenancy for unpaid rent and I issue an Order of Possession against the tenant.

I have examined the landlord's notice to end tenancy and find there is an error on it that the tenant knew or ought to have known were incorrect and, in the circumstances, pursuant to section 68, I find it is reasonable to correct. I note the due date for the \$2,100.00 arrears states January 17, 2022 when it should have read January 1, 2022. Pursuant to section 68, I also change the effective (move-out) date to 10 days after the notice is deemed served, to January 25, 2022.

As the effective date has passed, I grant the landlord an Order of Possession effective 2 days after service upon the tenant.

The landlord gave undisputed testimony to satisfy me tenant failed to pay rent in the amount of \$700.00 for the months of November 2021 through April 2022 (6 months). Pursuant to section 64(3) and Rule 4 of the Rules of Procedure, I allow the landlord to amend their claim to include rent for February, March and April. The landlord is entitled to a monetary order in the amount of \$4,200.00 [$\$700.00 \times 6 = \$4,200.00$].

The landlord continues to hold the tenant's security deposit in the amount of \$350.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain all of the tenant's security deposit in partial satisfaction of the monetary award. [$\$4,200.00 - \$350.00 = \$3,850.00$]

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 **\$3,850.00**. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: April 22, 2022

Residential Tenancy Branch