



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR-MT

For the landlord: OPR-DR, MNR-DR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- an order extending the time to file an application disputing the Notice issued by the landlord.

The landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant,
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The landlord attended the hearing; the tenant did not attend.

The landlord submitted documentary evidence and testimony showing that the tenant was served with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail March 4, 2022. The tracking number is located on the style of cause page of this Decision.

Based upon the landlord's oral and written submissions, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

#1 –

Despite having their own hearing scheduled for 9:30 am on May 24, 2022, plus the landlord's application and notice of hearing, the tenant failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

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.

7.4 Evidence must be presented

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 the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenant at the hearing, I order their application dismissed, without leave to reapply.**

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The tenant listed their child as a co-tenant on their application. The landlord confirmed and provided evidence that the child was not a tenant. As a result, I have amended the tenant's application to exclude the name of their child.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The evidence showed the tenancy originally began on July 21, 2021 for a monthly rent of \$1,650. The parties signed a new written tenancy agreement on January 1, 2022, for a monthly rent of \$1,450 due on the first day of the month. Filed in evidence were the two written tenancy agreements.

The landlord submitted evidence that on February 2, 2022, he served the tenant with the Notice, by personal delivery, listing a total unpaid rent of \$1,450 owed as of February 1, 2022. The effective vacancy date listed on the Notice was February 12, 2022. The Notice was filed into evidence.

The tenant did not file their application to dispute the first Notice within the 5 days allowed, as their application was completed on February 16, 2022.

The landlord submitted that a partial payment of \$1,000 was received later in February 2022 from Family Services, who pay this amount every month. The landlord said that the tenant owes the balance of the monthly rent of \$450.

The landlord submitted that since the Notice was issued to the tenant, the landlord has received a monthly payment of \$1,000; however, the tenant has failed to pay the balance for each on the months, leaving a total rent deficiency of \$1,800 through the day of the hearing. This amount is the rent deficiency of \$450 for February, March, April and May 2022, each.

Analysis

Order of Possession –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

As a result, I order the tenancy ended on February 12, 2022, the effective date of the Notice served to the tenant.

Therefore, pursuant to section 55(1) of the Act, I find that the landlord is entitled to, and I **grant** an order of possession for the rental unit effective **2 days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the tenant.

Monetary Order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owes an outstanding balance of \$1,800 in unpaid monthly rent, through the date of the hearing.

I find the landlord has established a monetary claim of **\$1,800**, for the unpaid monthly rent. I also grant the landlord recovery of their filing fee of **\$100**. I grant the landlord a **monetary order** pursuant to section 67 of the Act for the amount of **\$1,900**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The tenant's application is dismissed due to their failure to attend the hearing to present evidence in support of their own application and to respond to the landlord's application.

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent has been granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 24, 2022

Residential Tenancy Branch