



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, CNC, OLC, MNDCT, RP, LRE, PSF
For the landlord: OPR-DR, MNR-DR, FF

Introduction

This hearing was convened as the result of the cross applications for dispute resolution (application) of the parties 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 (10 Day Notice) issued by the landlord;
- an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to make repairs to the rental unit;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act.

The landlord applied for:

- an order of possession of the rental unit pursuant to the 10 Day Notice served to the tenant;
- a monetary order for unpaid rent;
- recovery of the cost of the filing fee.

The landlord attended the hearing; the tenant did not attend. The landlord said that he received the tenant's application.

The landlord submitted he served the tenant with his application by registered mail. The landlord filed the Canada Post tracking number showing proof of service, verifying the date of service was March 16, 2022. I find the landlord submitted sufficient evidence to prove the tenant was served with the landlord's application as required under the Act.

The hearing proceeded in the tenant's absence and continued for 22 minutes. The landlord was provided the opportunity to present his 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 (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matter –

Despite having their own hearing scheduled for 9:30 a.m. on June 7, 2022, 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.**

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, unpaid utility charges, and recovery of the cost of the filing fee?

Background and Evidence

The landlord testified that the tenancy began in May 2021, monthly rent is \$2,400, and the tenant did not pay a security deposit.

The landlord submitted evidence that on February 25, 2022, he served the tenant with the Notice, by personal delivery, listing a total unpaid rent of \$5,155 and unpaid utility charges of \$1,665 owed as of February 25, 2022. The effective vacancy date listed on the Notice was March 6, 2022. The Notice was filed into evidence by both parties.

The landlord's evidence shows a different amount of unpaid monthly rent and unpaid utility charges listed on the 10 Day Notice than the 10 Day Notice filed by the tenant. The landlord's copy of the Notice showed the same first page and a different second page, with original handwriting, listing unpaid monthly rent of \$6,355 and unpaid utility charges of \$1,815.71. In explanation, the landlord said he had to have help filling out the papers.

In support of his claim for unpaid monthly rent, the landlord submitted that the tenant has completely stopped paying rent, and as of the day of the hearing, owed an outstanding total rent deficiency of \$13,355. Filed in evidence was an accounting of the payments made.

In support of his claim for unpaid utility charges, the landlord said that the tenant was responsible for the hydro costs incurred for the rental unit and has also stopped paying the bills, leaving a balance of \$3,032.83. The landlord explained that the hydro bill was in his name, but that it was sent to the rental unit address for the tenant to pay. Filed in evidence was a written demand for the payment of utilities and copies of utility bills.

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.

In this case, the landlord served the tenant with the Notice on February 25, 2022, and the effective date listed was March 6, 2022, which is 9 days after service. I find the corrected effective date of the 10 Day Notice is March 7, 2022, the 10th day after service.

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, the tenant failed to attend the hearing on her application disputing that she owed unpaid monthly rent.

As a result, I order the tenancy ended on the corrected effective date of the Notice, or March 7, 2022.

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 –

Under 4.2 of the Rules, a landlord may amend their application at the hearing in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the application for dispute resolution was made.

I find it reasonable under the circumstances to allow the landlord to increase his monetary claim for unpaid monthly rent and unpaid utility charges as the tenant has yet to vacate the rental unit, according to the landlord.

I therefore find the landlord has provided sufficient, undisputed evidence to show the tenant owed, but did not pay the full amount of monthly rent established by their oral tenancy agreement. For this reason, I find the landlord established a total monetary claim for unpaid rent in the amount of **\$13,355**.

As to the landlord's claim for unpaid utility charges, section 46(6) of the Act allows a landlord to include this amount on the 10 Day Notice if the tenancy agreement requires the tenant to pay the charges. The landlord's undisputed evidence is that the tenant was required to pay hydro costs per the oral tenancy agreement. I find support for this evidence in the tenant's application, which referred to her assertion that she has made payments of the utility costs.

I therefore find the landlord has provided sufficient, undisputed evidence to show the tenant owed, but did not pay the full amount of the utilities established by their oral tenancy agreement. For this reason, I find the landlord established a total monetary claim for unpaid utility charges in the amount of **\$3,032.83**.

I grant the landlord a monetary award of \$100 for recovery of the filing fee paid for his application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of **\$16,487.83**, comprised of unpaid rent through the date of the hearing in the amount of \$13,355, unpaid utility charges of \$3,032.83, and recovery of the filing fee of \$100.

Should the tenant fail to pay this amount to the landlord without delay after being served the order, the 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 recoverable 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 and unpaid utility charges 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: June 07, 2022

Residential Tenancy Branch