



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR
 For the landlord: OPR, MNR

Introduction

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

The tenant applied on April 1, 2022, for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (**Notice**) issued by the landlord.

The landlord applied on April 5, 2022, for:

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

The landlord was present for the beginning of the hearing, which began at 1:30 pm on July 22, 2022. Affirmed testimony was provided by the landlord. At 1:39, the tenant called into the hearing and was affirmed. The hearing continued with the tenant given the opportunity to provide testimony.

Neither party raised an issue with regard to service of the other's evidence or application.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are

reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord said that the tenant vacated the rental unit on July 2, 2022, and when the tenant dialled into the hearing, the tenant confirmed that date. As a result, I have excluded the landlord's request for an order of possession of the rental unit. I have also declined to consider the tenant's application as the issue raised is now moot, due to the tenancy ending on July 2, 2022. Therefore, I dismiss the tenant's application, without leave to reapply.

The hearing continued on the landlord's monetary claim only for unpaid rent.

Additionally, the landlord appeared unable to understand much of what I was saying, as English was not their first language.

The landlord continually indicated they did not understand me, and it was necessary to ask repeated questions. I also note that I found it difficult to understand much of what the landlord said in the hearing.

The landlord did not have an agent or interpreter attend the hearing.

Additionally, the landlords listed two tenants on their application. However, the landlords' Notice listed the full name of the tenant attending the hearing and the first name of the other tenant.

The written tenancy agreement shows the tenant here and another tenant as the tenants. I find it appropriate to exclude the other tenant named in the landlords' application, as there was insufficient evidence that the other listed tenant, CB, was ever a tenant. As well, the landlord failed to list the full name of CB on their Notice.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant for unpaid rent?

Background and Evidence

The tenancy began on June 24, 2011, and ended on July 2, 2022, when the tenant vacated the rental unit. The monthly rent at the beginning of the tenancy was \$2,000 and the ending monthly rent was \$2,300. A written tenancy agreement was filed in evidence.

The landlord submitted evidence that on March 27, 2022, they served the tenant with the Notice, by attaching it to the tenant's door, listing a total unpaid rent of \$6,900 owed as of March 24, 2022. The effective vacancy date listed on the Notice was April 9, 2022. The Notice was filed into evidence.

In their application, the tenant confirmed receiving the Notice on March 28, 2022.

The tenant filed their application to dispute the Notice within the 5 days allowed, as their application was made on April 1, 2022; however, the tenancy has ended.

The landlord said that the amount of monthly rent listed on the Notice was the unpaid rent for January, February, and March, 2022, and since the date the Notice was served on the tenant, the tenant has made no payments.

The landlord said that the tenant has been months behind in monthly rent since the pandemic started and attempted to put the tenant on a payment plan for the rent deficiency, but they failed to pay.

As of the day of the hearing, the landlord submitted that the tenant owed \$13,800 in unpaid rent, for each month from January through June, 2022.

The tenant submitted that they made a rent payment in January 2022, and confirmed that no further rent payments were made.

Included in the landlords' filed evidence was a tenant ledger sheet for the rent payments from January 2021 and an agreement for the payment plan.

Analysis

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 the landlord did 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 confirmed the landlord's evidence that they had not paid the monthly rent listed on the Notice or any monthly rent since that date.

I have reviewed the landlords' evidence and find the same shows that the tenant made 10 monthly rent payments in 2021, leaving 2 months when they did not pay. I find it reasonable to conclude that when the tenant paid rent on January 6, 2022, the landlords applied that payment to the outstanding rent deficiency for 2021, as indicated in their evidence.

For this reason, I find the landlord submitted sufficient evidence to prove that the tenant owed the monthly rent of \$2,300 for the months of January through June 2022, and did not pay.

While the landlords' monetary claim at the time of their application was \$6,900, under 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 therefore allowed the landlord to increase their monetary claim of \$6,900 to \$13,800, as the tenant remained in the rental unit until July 2, 2022.

I therefore find the landlords have established a monetary claim for a total of **\$13,800**, as claimed by the landlords, for unpaid rent for each of the months from January through July 2022.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of **\$13,800**.

Should the tenant fail to pay the landlords this amount 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, as they vacated the rental unit on July 2, 2022, and their request to cancel the Notice was moot by the time of the hearing.

The landlords were granted a monetary order of \$13,800, reflecting the amount of unpaid rent owed by the tenant from January through June 2022.

As the rental unit was vacated by the tenant, the matter of the landlords' request for an order of possession of the rental unit was moot.

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: July 27, 2022

Residential Tenancy Branch