



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-DR, MNR-DR

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.

The landlord applied for an order of possession of the rental unit pursuant to the 10 Day Notice served to the tenant and a monetary order for unpaid rent and unpaid utility charges.

The landlord attended the hearing; the tenant did not attend. The landlord said that although he heard the tenant filed an application for dispute resolution, he was not served the tenant's application.

This landlord's dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated May 30, 2022, which should be read in conjunction with this decision.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on June 2, 2022.

The landlord filed the Canada Post receipt showing the tracking number as proof of service.

Based on the landlord's testimony and evidence, I find the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was given the opportunity to provide his evidence orally.

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

Preliminary and Procedural Matter –

Despite having his own hearing scheduled for 11:00 a.m. on August 22, 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 a monetary order for unpaid rent and unpaid utility charges?

Background and Evidence

The landlord filed a written tenancy agreement showing a tenancy start date of November 1, 2021, and monthly rent of \$1,500. The landlord said that although the written tenancy agreement specified that the security deposit was to be \$750, the tenant paid only \$500. The tenant was also obligated to pay 30% of the utility bills specified on the tenancy agreement.

The landlord filed a copy of the 10 Day Notice, which was dated April 9, 2022. The landlord submitted evidence that on April 10, 2022, he served the tenant with the Notice, by personal delivery, listing a total amount of unpaid rent of \$2,220 and unpaid utility charges of \$200 owed. The effective vacancy date listed on the Notice was April 21, 2022. The Notice was filed into evidence by both parties.

The landlord said the tenant has since vacated the rental unit and they no longer seek an order of possession.

In support of the claim for unpaid monthly rent, the landlord submitted that the tenant owed, but did not pay the full amount of rent for March 2022, leaving a balance of \$720 and did not pay monthly rent at all in April 2022. The landlord said the tenant did not pay the monthly rent for May 2022, but that the tenant was entitled to a month's rent for having received Two Month Notice to End Tenancy for Landlord's Use of Property. The tenancy ended by the end of May 2022.

In support of his claim for unpaid utility charges, the landlord said that the tenant was responsible for 1/3 of the utility charges, although he usually only collected \$100 from the tenant each month. The landlord submitted copies of the utility bills and said the tenant owed \$200.

Filed in evidence was a tenant ledger sheet.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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. If the tenancy agreement requires the tenant to pay utility charges and the utility charges remain unpaid 30 days after written demand, the charges may be treated as unpaid rent and added to the 10 Day Notice.

While the tenant filed an application for dispute resolution in dispute of the Notice, the tenant failed to attend the hearing on his application disputing that he owed unpaid monthly rent and unpaid utility charges.

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 tenancy agreement. For this reason, I find the landlord established a total monetary claim for unpaid rent in the amount of **\$2,220**.

As to the landlord's claim for unpaid utility charges, the landlord's undisputed evidence is that the tenant was required to pay 1/3 of the utility costs per the tenancy agreement.

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 tenancy agreement. For this reason, I find the landlord established a total monetary claim for unpaid utility charges in the amount of **\$200**.

The landlord requested that they be allowed to retain the tenant's security deposit in partial satisfaction of the monetary award of \$2,420.

I therefore direct the landlord to deduct the security deposit of \$500, in partial satisfaction of their monetary award of \$2,420, and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act, for the balance due of \$1,920.

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 his failure to attend the hearing to present evidence in support of his own application and to respond to the landlord's application.

The landlord's application for 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: August 22, 2022

Residential Tenancy Branch