



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR-MT
 LL: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Tenant’s Application for Dispute Resolution was made on April 21, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- An order cancelling a 10 Day Notice for Unpaid Rent and Utilities dated April 11, 2022 (the “10 Day Notice”); and
- more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the 10 Day Notice Notice;

The Landlord’s Application for Dispute Resolution was made on May 21, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- a monetary order for unpaid rent and utilities;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant, the Landlord, and the Landlord’s interpreter T.M. attended the hearing at the appointed date and time.

At the start of the hearing, the Tenant stated that he served his Application to the Landlord, however, could not recall when or how he sent it. The Landlord stated that she did not receive the Tenant’s Application.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure 3.1 (the “Rules of Procedure”); the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

Section 89 of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution: An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director’s orders: delivery and service of document]...*

Rule of Procedure 3.5 states; proof of service required at the dispute resolution hearing. At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution

The Residential Tenancy Branch Policy Guideline 12 (the “Policy Guidelines”) states that; all parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where

more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

I find that the Tenant has provided insufficient evidence to demonstrate that he has served the Landlord with the Application in a manner required by Section 89(1) of the *Act*. Furthermore, the Landlord stated that they have not received the Application package from the Tenant. In light of the above, I dismiss the Tenant's Application without leave to reapply. I note that the Tenant did not provide any documentary evidence in support to his Application, nor in response to the Landlord's Application, aside from a copy of the 10 Day Notice.

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The Landlord stated that she served the Tenant with her Application by Registered Mail. The Tenant confirmed receipt. As no issues were raised, I find the Landlord's Application was sufficiently served to the Tenant pursuant to Section 71 of the *Act*.

The hearing continued based on the Landlord's Application seeking an order of possession, as well as a monetary order relating to unpaid rent. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that during the hearing, the Tenant was cautioned on several occasions regarding interruptions. The Tenant also experienced issues with his phone connection, which required him to disconnect and call back into the teleconference hearing on several occasions, before deciding to call in on a different phone.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession in relation to unpaid rent and utilities, pursuant to Section 55 of the *Act*?

2. Is the Landlord entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement was provided in the Landlord's documentary evidence which confirms the following; the tenancy started on April 6, 2021, however, the Tenant stated that he began to occupy the rental unit on May 14, 2021. The Tenant is required to pay rent in the amount of \$1,550.00 to the Landlord, which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$775.00, which the Landlord stated she continues to hold. The Tenant continues to occupy the rental unit.

The Landlord testified the Tenant did not pay the full amount of rent and utilities since the start of the tenancy. The Landlord provided a detailed rent ledger showing the rent and utility amounts owed to the Landlord each month, compared to the payments made by the Tenant to the Landlord. The Landlord stated that at the time of the 10 Day Notice being served, the Tenant owed rent in the amount of \$4,698.00 as well as utilities in the amount of \$792.00. The Landlord stated that she subsequently served the Tenant with a 10 Day Notice dated April 11, 2022 with an effective date of April 21, 2022 by Registered Mail. The Landlord provided a proof of service in support.

The Landlord stated that the Tenant has not made any payments towards the outstanding balance of rent and utilities reflected on the 10 Day Notice. Furthermore, the Landlord stated that the Tenant has not paid rent or utilities since receiving the 10 Day Notice. As such, the Landlord is seeking an Order of Possession. Furthermore, the Landlord stated that the Tenant owes a total of \$12,159.00 for unpaid rent and utilities.

The Tenant responded by stating that he does not agree with the amount being sought by the Landlord. The Tenant admits that he was without work for a period of time. The Tenant stated that he was making attempts to catch up on the outstanding rent and utilities, however, the Landlord was unwilling to attend to collect the cash payment. The Tenant stated that he does not have a bank account and only pays the Landlord in cash. The Tenant was unaware as to how much he currently owes the Landlord, however, estimates the amount of be around \$6,000.00 to \$7,000.00.

The Tenant disputed the percentage of utilities he is required to pay, while the Landlord stated that the Tenant is required to pay half of the utility bills. The Landlord did not

provide a copy of the utility bills in support. The Landlord confirmed that the Tenant pays rent in cash, however, when the Landlord attends the rental unit to collect the rent, the Tenant does not have the funds available

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

As previously noted, the Tenant provided insufficient evidence to demonstrate that they served the Landlord with his Application to cancel the 10 Day Notice. As such, the Tenant's Application is dismissed without leave to reapply.

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In relation to the Landlord's Application for compensation relating to unpaid rent and utilities, Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *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.

I accept that the parties agreed that the Tenant is required to pay rent to the Landlord in the amount of \$1,550.00 on the first day of each month. This is further confirmed by the tenancy agreement which was provided by the Landlord. I find that the tenancy agreement also confirmed that the Tenant was required to start paying rent to the Landlord as of April 6, 2021, when the tenancy agreement came into effect.

I find that the Landlord has provided sufficient evidence based on their detailed rent ledger, that as of April 11, 2022 the Tenant owed the Landlord rent in the amount of \$4,698.00 from the start of the tenancy up until and including April 2022. While the Tenant disagreed with the amount of rent the Landlord was seeking, I find that the Tenant provided insufficient evidence to prove otherwise.

I accept that the parties agreed that the Tenant has not paid any amount of rent to the Landlord from May 2022 up to and including August 2022. As such, I find that the Tenant was required to pay \$1,550.00 x 4 months (May to August 2022) = \$6,200.00.

I find that the Tenant did not have the right to withhold the rent, as such, I find that the Landlord is entitled to a monetary order for unpaid rent in the amount of **\$10,898.00** (\$4,698.00 + \$6,200.00).

With respect to the Landlord's claim for unpaid utilities, I find that the Landlord provided insufficient evidence to support the value of their loss. The Landlord confirmed that she did not provide any utility bills to confirm the amount of utilities owing. Furthermore, I find that the tenancy agreement between the parties does not include a term outlining the percentage of utilities that the Tenant is responsible to pay for. As such, I decline to award the Landlord monetary compensation for unpaid utilities and dismiss this claim without leave to reapply.

As the Landlord was partially successful with their Application, I find that they are entitled to recover the **\$100.00** filing fee paid to make the Application. I find it appropriate in the circumstances to order that the Landlord retain the \$775.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$10,223.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$10,898.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$775.00</i>)
TOTAL:	\$10,223.00

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$10,223.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 25, 2022

Residential Tenancy Branch