



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Accordingly, the landlord's application for monetary compensation for damage and the tenant's application requesting an order for the landlord to comply with the Act are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Are either of the parties entitled to recover the filing fee for the respective applications?

Background and Evidence

The tenancy for this apartment unit began over 20 years ago. The current landlord purchased the rental property 7 years ago. The current monthly rent is \$800.00 payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The tenant submitted a copy of a 10 Day Notice dated August 7, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$5035.00 which was due on August 1, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since with the exception of a \$500.00 payment on August 10, 2022.

The landlord testified that the tenant owes rent of \$635.00 for each of April and May 2022 and \$800.00 for the each of the months of June, July, August, September and October 2022. The total outstanding rent amount is \$3970.00 after deducting the \$500.00 payment in August 2022 and \$800.00 the landlord agreed to deduct for van painting.

The landlord was also seeking late fees as per the tenancy agreement in the amount of \$5.00 per day.

The tenant acknowledged the outstanding rent as claimed by the landlord but testified that he had a deal with the landlord to paint his van in lieu of rent and submitted an

invoice of approximately \$4600.00. The tenant submits that he paid an additional \$500.00 at the time of providing the invoice to the landlord.

The landlord testified that the agreement to paint the van was for only \$800.00 and this was reflected in a notice of outstanding rent provided to the tenant and the tenant signed for it. The tenant was permitted to deduct this \$800.00 from outstanding rent. The landlord testified that the tenant only provided him with the \$4600.00 invoice after he was served with the 10 Day Notice.

Analysis

I am satisfied that the tenant was served with the 10 Day Notice on August 7, 2022 as indicated in the tenant's own application.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. I find the tenant has provided insufficient evidence that there was any agreement between the parties to paint the van for the amount of \$4600.00 and that this was to be applied to outstanding rent.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I accept the landlord's claim for outstanding rent of \$3970.00.

As per section 7 of the *Residential Tenancy Regulation* the landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent if provided for in the tenancy agreement.

I find the tenancy agreement which provides for a \$5.00 late fee charge per day is more than what is permitted under the Act. I find the landlord is entitled to a maximum of \$25.00 for each incident of late payment of rent. Accordingly, the landlord is entitled to \$175.00 which includes a \$25.00 fee for the seven months of April through October 2022.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$4245.00 (\$3970.00 + \$125.00 + \$100.00).

The landlord continues to hold a security deposit of \$350.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3895.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$3,895.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 21, 2022

Residential Tenancy Branch