



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR
 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 Tenants’ Application for Dispute Resolution was made on May 28, 2022 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent dated May 24, 2022 (the “10 Day Notice”).

The Landlord’s Application for Dispute Resolution was made on June 9, 2022 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

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

The hearing was scheduled for 11:00 A.M. on October 6, 2022 as a teleconference hearing. The Landlord’s Agent attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agent and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord's Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on October 6, 2022.

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As neither the Tenants, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

The hearing continued based on the Landlord's Application. The Landlord's Agent confirmed at the start of the hearing that the Tenants vacated the rental unit on September 10, 2022. As such, the Landlord is no longer seeking an order of possession. The Landlord's Agent stated that the Landlord continues to seek a monetary order for unpaid rent. The Landlord's Agent stated that the amount of rent owing to the Landlord at the end of the tenancy is \$16,800.00 which has increased since the original Application was made.

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the Application may be amended at the hearing. If an amendment to an Application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, I permit the Landlord's amendment of the monetary amount at the time of the hearing as it can be reasonably anticipated that the amount of unpaid rent could increase while waiting for the hearing date.

The Landlord's Agent stated that he served a copy of the Notice of Hearing and documentary evidence to the Tenants by Canada Post Registered Mail on June 22, 2022. The Landlord provided a copy of the Registered Mail receipts in support. Pursuant to Section 89 and 90 of the Act, I find these documents are deemed served to

the Tenants five days later, on June 27, 2022. Furthermore, as the Tenants had also submitted an Application, I find that they would have been made aware of the hearing.

The Landlord's Agent was 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the Tenants' security deposit, pursuant to Section 38 and 67 of the *Act*?
3. Is the Landlord entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on February 19, 2021. The Tenants were required to pay rent in the amount of \$2,800.00 which was due on the 19th day of each month. The Tenants paid a security deposit in the amount of \$1,400.00 which the Landlord continues to hold.

The Landlord's Agent testified the Tenants did not pay rent when due for March, April and May 2022. The Landlord's Agent stated that the Landlord subsequently served the Tenants with a 10 Day Notice dated May 24, 2022 with an effective date of June 8, 2022 by Registered Mail on May 24, 2022. The Landlord provided a proof of service as well as the Registered Mail receipts in support.

The Landlord's Agent stated that at the time of serving the Tenants with the 10 Day Notice, the Tenants owed rent in the amount of \$8,400.00. The Landlord's Agent stated that the Tenants provided the Landlord with a cheque in the amount of \$8,400.00, however, the cheque was returned NSF, therefore, the Tenants did not pay any of the outstanding rent.

The Landlord's Agent stated that the Tenants also failed to pay rent for June, July and August 2022, bringing the balance of unpaid rent to \$16,800.00. If successful, the Landlord is also seeking the return of the filing fee.

As previously mentioned, no one attended the hearing for the Tenants to respond to the Landlord's Agent's testimony.

Analysis

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

Section 26(1) of the *Act* confirms:

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.

I find that the Tenants breached Section 26 of the *Act* as I find that there is no evidence before me to indicate that the Tenants were entitled to deduct all or a portion of rent. I accept that the Tenants failed to pay rent to the Landlord from March until August 2022 in the amount of \$16,800.00. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of **\$16,800.00**. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the portion of the 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 \$15,500.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$16,800.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-(\$1,400.00)</i>

TOTAL:	\$15,500.00
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Conclusion

The Landlord is granted a monetary order in the amount of \$15,500.00. The monetary order should be served to the Tenants 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: October 06, 2022

Residential Tenancy Branch