



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: **CNR, FFT**
 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 October 10, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid Rent; and
- an order granting the recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on October 12, 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 Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing the Tenant stated that they served their Application to the Landlord. The Landlord confirmed receipt. The Landlord stated that they served their Application and documentary evidence to the Tenant. The Tenant confirmed receipt. I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Tenant stated that they served their evidence to the Landlord two days before the hearing. The Landlord confirmed that they received the Tenant's evidence 8 minutes before the hearing when the Landlord checked their emails. The Landlord stated that they have not had sufficient time to review, consider, and respond to the Tenant's evidence given it was served late.

Preliminary Matters

According to the Rules of Procedure 2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing.**

In this case the Tenant served the Landlord two days during the hearing. I find that it would be prejudicial to the Landlord to consider the Tenant's evidence as the Landlord has not had the opportunity to respond to the Tenant's evidence. As such, only the Tenant's oral testimony will be considered during the hearing.

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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice for Unpaid Rent dated October 3, 2022 (the "10 Day Notice"), pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful, is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
5. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 20, 2022. Currently, rent in the amount of \$2,700.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,350.00 which the Landlord currently holds.

The parties agreed that the Tenant failed to pay rent in the amount of \$1,925.00 in September 2022, and also failed to pay \$2,700.00 when due on October 1, 2022.

The Landlord testified that he subsequently issued the 10 Day Notice on October 3, 2022 with an effective date of October 15, 2022. The Tenant confirmed receipt on October 6, 2022. The parties agreed that the Tenant has not made any payments towards the unpaid rent since receiving the 10 Day Notice.

The parties agreed that the Tenant has also failed to pay rent in the amount of \$2,700.00 to the Landlord for November 2022. The parties agreed that currently, the Tenant owes the Landlord rent in the amount of \$7,325.00.

During the hearing, the Tenant stated that she was of the impression that the Landlord was required to serve three written warnings to the Tenant prior to issuing a notice to end tenancy. The Tenant stated that life circumstances has prevented her from paying rent.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenants 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.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The Landlord stated they served the 10 Day Notice on October 3, 2022. I accept that the Tenant received the 10 Day Notice on October 6, 2022. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. While the Tenant made an Application to cancel the 10 Day Notice on October 10, 2022 I find that the Tenant in her own testimony, confirmed that she has not paid rent to the Landlord in the amount of \$7,325.00. I find that the Tenant was not entitled to withhold this amount of rent from the Landlord. As such, the Tenant's Application is dismissed without leave to reapply.

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.

I accept that the parties agreed that the Tenant has not paid rent in the amount of \$7,325.00. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of **\$7,325.00**. 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 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 \$6,075.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$7,325.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>-(\$1,350.00)</i>
TOTAL:	\$6,075.00

Conclusion

The Tenant breached the tenancy agreement by not paying rent when due.

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 \$6,075.00. 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: November 17, 2022

Residential Tenancy Branch