



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FERNIE FAMILY HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: OPR-DR, MNR-DR, FF
For the tenant: CNR, LRE

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord's agent (landlord) attended the hearing; the tenant did not attend.

The landlord was provided the opportunity to present her evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

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.

Preliminary and Procedural Matters

Issue #1- Service of the application package –

The landlord submitted documentary evidence and testimony showing that the tenant was served with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail July 22, 2022. The tracking number is located on the cover page of this Decision. The landlord said that the tenant was not living at the rental unit at the time they mailed the application package as she was staying at a rehab facility. The registered mail was sent to that facility where the tenant resided at the time.

Based upon the landlord's oral and written submissions, I find the tenant was served notice of the hearing by registered mail to where she resided at the time, in compliance with section 89(1) of the Act. I note that the notice set the date for hearing on December 5, 2022, at 9:30 am. The tenant's application was also set for hearing on December 5, 2022, at 9:30 am.

On the day of that hearing, the hearing on both applications was re-scheduled to December 6, 2022, at 9:30 am. I was not informed of this change in scheduling, rather I learned this information from the Communications portion of the RTB's digital file on both applications. The Communications portion also said that staff with the RTB confirmed with both parties the change of hearing date. In addition, a new notice of hearing was emailed to both parties on December 5, 2022.

Issue #2 – tenant's application -

Despite having her own hearing scheduled on December 5, 2022, and then re-scheduled for 9:30 am on December 6, 2022, plus the landlord's application and notice of hearing, 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 the tenant's application dismissed, without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The evidence showed the tenancy originally began on November 15, 2015. The monthly rent was subsidized by BC Housing and was \$529 until July 1, 2022.

The landlord testified that the tenant failed to provide BC Housing the necessary paperwork in order to continue the tenancy, when BC Housing conducted their annual assessment in February 2022. BC Housing continued to ask for the paperwork and the landlord sent multiple reminders to the tenant to provide the necessary paperwork, according to the landlord. The landlord filed evidence of the reminders. The landlord submitted that beginning on July 1, 2022, the tenant's monthly rent increased to \$1,128 to reflect the market rate.

The landlord submitted evidence that on June 30, 2022, they served the tenant with the 10 Day Notice, by attaching it to the tenant's door. The Notice listed a total unpaid rent of \$4,106 owed as of June 30, 2022. The effective vacancy date listed on the Notice was July 10, 2022. The Notice and witnessed, signed proof of service was filed into evidence.

In addition, in the tenant's application, she confirmed receipt of the 10 Day Notice, by attachment to the door, though the tenant said that date was June 29, 2022.

The tenant did not file their application to dispute the first Notice within the 5 days allowed, as their application was filed and completed on July 6, 2022.

The landlord submitted that since the Notice was issued, the tenant has made one rent payment in the amount of \$550 on November 27, 2022. The landlord said that the tenant owes the balance of the monthly rent of \$10,324 accumulated as of the day of the hearing.

The landlord filed tenant rent payment accounting records.

Analysis

Order of Possession –

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.

The Notice informed the tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the RTB to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

As a result, I order the tenancy ended on July 10, 2022, the effective date of the Notice served to the tenant.

Therefore, pursuant to section 55(1) of the Act, I find that the landlord is entitled to, and I **grant** an order of possession for the rental unit effective **2 days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the tenant.

Monetary Order –

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application, to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant has only made a payment of \$550 since the Notice was issued and that the tenant owes the total amount of unpaid rent of **\$10,324** through the date of the hearing.

I find the landlord has established a monetary claim of **\$10,324**, for the unpaid monthly rent.

I also grant the landlord recovery of their filing fee of **\$100**.

As a result, I grant the landlord a **monetary order** pursuant to section 67 of the Act for the amount of **\$10,424**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary 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 subject to recovery from the tenant.

Conclusion

The tenant's application is dismissed due to their failure to attend the hearing to present evidence in support of their own application and to respond to the landlord's application.

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee 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: December 06, 2022

Residential Tenancy Branch