



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, OPN, MNRL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent , pursuant to sections 46 and 55;
- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property, pursuant to sections 49 and 55;
- an order of possession under a tenant's notice to end a tenancy, pursuant to sections 45 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants EK (the tenant), OK and TM and landlord YY attended the hearing. Landlord YY was assisted by agent EY (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Named Tenant

At the outset of the hearing the tenant corrected the spelling of his last name.

Pursuant to section 64(3)(a) of the Act, I have amended the application. The tenant's correct legal name is recorded on the cover page of this decision.

Preliminary Issue – Service

The notice of hearing is dated August 9, 2022.

The landlord affirmed she attached the notice of hearing and the evidence to the tenant's front door on August 11, 2022.

The tenant confirmed receipt of the notice of hearing on August 17, 2022 at 11:00 P.M. The tenant affirmed he did not receive the evidence and did not serve response evidence.

I accept the uncontested testimony that the landlord served the notice of hearing in accordance with section 89(2) of the Act.

The parties offered conflicting testimony about service of the landlord's evidence. The landlord has the onus to prove, on a balance of probabilities, that she served the evidence.

Rule of Procedure 3.5 states:

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 Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Rule of Procedure 3.13 states:

Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package. An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution] or Rule 10 [Expedited Hearings].

Based on the tenant's more convincing testimony, I find the landlord did not serve the evidence. I am excluding the landlord's evidence from consideration, per Rules 3.5 and 3.13.

Preliminary Issue – Vacant rental unit

At the outset of the hearing both parties agreed the tenant no longer occupies the rental unit.

The application for an order of possession is moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Preliminary Issue – Late Amendment

The landlord submitted an amendment on December 13, 2022 to make a claim against tenant TM, occupant of another rental unit.

Rule of Procedure 4.6 states:

A copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

I rejected the amendment, as the landlord submitted the amendment two days before the hearing.

TM disconnected at 10:01 AM.

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend her monetary claim for \$1,400.00 in unpaid rent to include an additional \$2,440.00 for the unpaid rent from May to October 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$3,840.00.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord purchased the rental in July 2021 and does not know when the tenancy started. The landlord changed the rental unit's lock around October 05, 2022. Later the landlord affirmed the tenancy ended in the end of September 2022.

The tenant affirmed the tenancy started in July 2020 and ended on September 01, 2022, when the landlord changed the rental unit's lock.

Both parties agreed that monthly rent was \$520.00, due on the first day of the month. The landlord collected and holds in trust a security deposit in the amount of \$260.00.

The landlord affirmed the tenant's girlfriend moved to the rental unit in June 2022 and the tenant must pay rent in the amount of \$700.00 per month since July 2022 because of the extra occupant. The tenant affirmed he did not agree to pay a higher rent when his girlfriend moved in June 2022.

The landlord affirmed the tenant did not pay rent in May, June, July, August, September and October 2022. Later the landlord affirmed the tenant paid \$600.00 in August 2022.

The landlord is claiming unpaid rent in the amount of \$520.00 for May and June 2022 and \$700.00 for July, August, September and October 2022. The landlord is claiming a total of \$3,840.00.

The tenant affirmed he paid \$520.00 on May 01 and on June 01, 2022 and \$1,600.00 on September 01, 2022. The tenant affirmed the landlord refused to issue receipts. The tenant affirmed he does not have rental arrears.

The landlord affirmed she issued receipts for cash payments.

The tenant affirmed he did not provide his forwarding address. The tenant confirmed his forwarding address during the hearing. The landlord confirmed her current address for service. Both addresses are recorded on the cover page of this decision.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement.

A landlord may only charge a fee for a new occupant if the parties agree to an occupant fee.

The parties offered conflicting testimony. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any accepted documentary evidence to support her claim that the tenant did not pay rent from May to October 2022 or that the tenant agreed to pay an occupant fee. The landlord did not call any witnesses.

I find the landlord's testimony was not convincing and the tenant's testimony was convincing and detailed.

Based on the tenant's convincing and detailed testimony, I find the tenancy ended on September 01, 2022 and that monthly rent was \$520.00.

Based on the tenant's convincing and detailed testimony, I find the tenant paid \$520.00 on May 01, \$520.00 on June 01 and \$1,600.00 on September 01, 2022 for July, August and September 2022 rent.

As such, I dismiss the landlord's claim for a monetary order for unpaid rent.

For the purpose of educating the landlord, I note that under section 31 of the Act the landlord is not authorized to change the rental unit's lock.

Per section 71(2) of the Act, I deem the landlord served the tenant's forwarding address three days after the day of this decision. The landlord is advised to address the security deposit in accordance with section 38 of the Act.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

Conclusion

I dismiss the landlord's application without leave to reapply.

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: December 16, 2022

Residential Tenancy Branch