



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, 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 One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord SY (the landlord) and the tenant's agent AP (the tenant) attended the hearing. 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 – Service

The landlord served the notice of hearing and the evidence (the materials) via registered mail and a second evidence package via email on January 06, 2023.

The tenant confirmed receipt of the materials and the second evidence package on January 06, 2023.

The landlord confirmed receipt of the tenant's response evidence.

Based on the testimonies, I find that each party was served with the respective materials in accordance with section 89 of the Act.

The landlord submitted an amendment to the Residential Tenancy Branch (RTB) on January 05, 2023 (form 42L). The landlord affirmed she emailed the amendment on January 06, 2023. Later the landlord stated she is not sure if she emailed the amendment form.

The tenant testified she did not receive the amendment form.

Rule of Procedures 3.5 and 4.1 state:

3.5: 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.

4.1: An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence on the Dispute Access site or with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter or remove claims made in the original application.

Based on the landlord's vague testimony, I find the landlord failed to prove, on a balance of probabilities, that she served the amendment.

I did not accept the amendment. The landlord is at liberty to submit a new application for monetary claims, except for unpaid rent.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenant moved out on December 03, 2022.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

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.

Issues to be Decided

Is the landlord entitled to:

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

Background and Evidence

While I have turned my mind to the evidence and 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.

Both parties agreed the tenancy started on July 04, 2020. Monthly rent was \$1,500.00, due on the first day of the month. At the outset of the tenancy a deposit of \$742.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant did not serve her forwarding address. Both parties confirmed their current addresses for service. The addresses are recorded on the cover page of this decision.

The landlord is claiming \$3,000.00 for the October and November 2022 unpaid rent.

Both parties agreed the tenant did not pay October and November 2022 rent.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

I accept the undisputed testimony that the landlord and the tenant agreed to a tenancy and the tenant was obligated to pay monthly rent in the amount of \$1,500.00 on the fourth day of each month.

I accept the undisputed testimony that the tenant did not pay rent due on October 04 and November 04, 2022.

Per section 26(1) of the Act, I award the landlord October and November 2022 rent in the amount of \$3,000.00 (\$1,500.00 x 2 months).

As the landlord was successful, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$742.50 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent for October and November 2022 (\$1,500.00 x 2)	3,000.00
Filing fee	100.00
Subtotal	3,100.00
Deposit (minus)	742.50
Total:	2,357.50

Conclusion

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$742.50 deposit and award the landlord \$2,357.50. The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: January 23, 2023