



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, FFT

For the landlord: OPR, MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application *****024 pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 19, 2022 (the Notice), pursuant to section 46; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's applications *****403 and *****594 pursuant to the Act are for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for both applications, under section 72.

I left the teleconference connection open until 11:23 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. Landlord CS (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party was 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 tenants

All the applications list tenants AM and SC. The landlord considered SC a tenant because he occupied the rental unit, SC paid rent and the tenants’ application lists SC as a tenant.

The landlord submitted the tenancy agreement into evidence. It states the tenant is AM.

Residential Tenancy Branch (RTB) Policy Guideline 13 states:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Based on the tenancy agreement, I find the tenant is AM (the tenant). Thus, SC is not responsible for monetary claims related to the rental unit, as he was not a tenant.

As this dispute is regarding a tenancy between the tenant and the landlord, I exercise my authority under section 64(3)(c) of the Act to amend the applications to exclude the SC as a party in these applications.

Preliminary Issue – Service of application *****024

The landlord confirmed receipt of the tenant’s notice of hearing and that she had enough time to review it.

Based on the landlord’s convincing testimony, I find the tenant served the notice of hearing in accordance with section 89 of the Act.

The landlord affirmed the tenant moved out on December 01, 2022 and that she has possession of the rental unit.

As the tenant moved out, the application for an order to cancel the Notice is moot.

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.

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

Preliminary Issue – Service of applications *****403 and *****594

The landlord affirmed she did not serve the notice of hearing for application *****403 and that she served the notice of hearing and evidence (the materials) for application *****594 via email on November 23, 2022 at 12:18PM. The landlord emailed the materials to the email addresses recorded on the cover page of this decision. The landlord stated the claims in both applications are the same.

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

(emphasis added)

Based on the landlord's testimony, I find the landlord did not serve the notice of hearing for application *****403. I dismiss the landlord's application without leave to reapply.

The landlord must bear the cost of the filing fee for application *****403, as the landlord was not successful.

The tenancy agreement authorizes the landlord to contact the tenant "for any matter relating to this tenancy" using the AMB email address recorded on the cover page of this decision.

The landlord submitted into evidence an email from the tenant sent on August 25, 2022, from the AMB email address:

My disabilities make it extremely difficult to communicate on a regular basis, email would be best for me as I can read and sit with the information and reply when I have the energy.

Based on the tenancy agreement and the email dated August 25, 2022, I find the tenant authorized the landlord to serve documents via email.

Based on the landlord's convincing testimony, I find the landlord emailed the materials to the tenant's email address on November 23, 2022. Thus, I find the landlord served the materials in accordance with section 89(2) of the Act.

Regulation 44 provides that a document emailed is deemed to be received on the third day after it is emailed. I deem the tenant received the materials on November 26, 2022.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

As the tenant moved out, the application for an order of possession is moot.

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. a monetary order for loss?
3. an authorization to retain the deposit?
4. 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 party, 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 party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord testified the tenancy started on June 01, 2020. Monthly rent was \$1,200.00, due on the first day of the month. At the outset of the tenancy the landlord collected and currently holds in trust a deposit in the amount of \$600.00.

The landlord said the tenant did not pay rent due on July, August, September, October and November 01, 2022. The landlord affirmed she reduced rent to \$900.00 in July, August and September 2022.

The landlord is claiming unpaid rent in the amount of \$2,700.00 for July, August and September (\$900.00 per month x 3 months) and \$2,400.00 for October and November 2022 (\$1,200.00 per month x 2 months).

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.

Based on the landlord's convincing undisputed testimony and the tenancy agreement, I find the landlord and the tenant agreed to a tenancy and the tenant was obligated to pay monthly rent in the amount of \$1,200.00 on the first day of each month. I find the landlord reduced rent to \$900.00 per month for July, August and September 2022.

Based on the landlord's convincing testimony, I find the tenant did not pay rent due on July, August, September, October and November 01, 2022.

Per section 26(1) of the Act, I award the landlord July, August and September rent in the amount of \$2,700.00 (\$900.00 x 3 months) and October and November 2022 rent in the amount of \$2,400.00 (\$1,200.00 x 2 months).

As the landlord was successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for application *****594.

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 \$600.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent for July, August and September 2022 (\$900.00 x 3)	2,700.00
Unpaid rent for October and November 2022 (\$1,200.00 x 2)	2,400.00
Filing fee	100.00
Subtotal	5,200.00
Deposit (minus)	600.00
Total:	4,800.00

Conclusion

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$600.00 deposit and award the landlord \$4,800.00. 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 13, 2023

Residential Tenancy Branch