



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

<u>Dispute Codes</u>	Tenant application #1:	CNR
	Landlord application:	OPL, MND, MNDC, FF
	Tenant application #2:	CNL-MT

Introduction

This telephone conference call hearing was convened as the result of three applications for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The tenant first applied on October 6, 2022, for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the landlord.

The landlord filed an application on December 13, 2022, for an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued to the tenant, compensation for alleged damage to the rental unit by the tenant, compensation for a monetary loss or other money owed, and recovery of the cost of the filing fee.

The tenant then filed another application December 6, 2022, for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property and an order extending the time to file an application disputing the Two Month Notice issued by the landlord.

Although the issues in the tenant's first application and the landlords' application were not related, the files were administratively joined by the Residential Tenancy Branch (RTB) as cross applications, set for the same time and date. Later on, the tenant filed their second application, which was administratively set for the same date and time as a repeat application.

The landlord GP attended the hearing; the tenant did not attend.

The landlord was affirmed and testified they served the tenant with the landlords' Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by attaching the documents to the tenant's door on December 14, 2022.

Based upon the landlord's oral and written submissions, I find the tenant was served notice of this hearing in a manner complying with section 89(2) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present their 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

#1

Despite having their own hearing scheduled for 11:00 am on February 21, 2023, 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 both their applications dismissed, without leave to reapply.**

2

The landlord submitted that the tenant fully vacated the rental unit the week prior to the hearing and no longer required an order of possession of the rental unit.

I therefore determined the hearing would proceed on the tenant's first application for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in order to decide whether the landlords were entitled to a monetary order for unpaid rent.

#3

I find the landlords' application for an order of possession of the rental unit based upon a 2 Month Notice was now a moot issue, as the tenant vacated the rental unit prior to the hearing.

Additionally, I find the landlords' monetary claim was not sufficiently related to the primary issue of enforcing the 2 Month Notice.

For these reasons, I **dismiss** the landlords' application for enforcement of the 2 Month Notice, without leave to reapply, as the tenant has already ended the tenancy. Additionally, I **dismiss** the landlords' monetary claim, **with leave to reapply**.

I will address the landlords' request for recovery of the cost of the filing fee below in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recovery of the cost of the filing fee?

Background and Evidence

The landlords submitted a written tenancy agreement showing a tenancy start date of January 1, 2022, for a monthly rent of \$800 and a security deposit of \$400 being paid by the tenant.

The tenant confirmed in their application that they received the 10 Day Notice on October 5, 2022, by personal delivery. The tenant filed a copy of the Notice in evidence.

The Notice was dated October 5, 2022, listed an effective end of tenancy date of October 15, 2022, and unpaid rent of \$370 owed as of October 1, 2022.

The tenant did file their application to dispute the Notice within the 5 days allowed, as their application was made on October 6, 2022. The landlord said that they eventually received the monthly rent for October 2022, as it was paid by a government ministry. The landlord said that they have not received the monthly rent for February 2023, which is why they issued the tenant another 10 Day Notice. The landlord filed a copy of that 10 Day Notice.

The landlord submitted that as of the day of the hearing, the tenant owed \$800 for unpaid rent for February 2023.

Analysis

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 Residential Tenancy Branch (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 when the rent for October was paid.

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owes an outstanding balance of \$800 in unpaid monthly rent, through the date of the hearing.

Section 55(1.1) of the Act applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**

[Emphasis added]

Pursuant to section 55(1.1) of the Act, I grant the landlord a monetary award of **\$800** for unpaid rent through February 2023.

As to the landlord's request for recovery of the cost of the filing fee in their own application, I find the landlords were compelled to file their application as they served the tenant a 2 Month Notice. The tenant did file an application in dispute of the 2 Month Notice, but was past the time to file the dispute. I therefore grant the landlord recovery of their filing fee of \$100.

As a result of the above, I find the landlords have established a total monetary claim of **\$900**, which is the unpaid rent of **\$800 for February 2023**, and the **filing fee of \$100**. I grant the landlords a final, legally binding monetary order for the amount of their monetary award of **\$900**.

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

The landlords are authorized to keep and use the tenant's security deposit of \$400 in partial satisfaction of their monetary award of \$900. If the landlords elect to do so, the monetary order issued to them is reduced to \$500.

Conclusion

The tenant's applications are dismissed without leave to reapply as they failed to attend the hearing.

The landlord's application for enforcement of the 2 Month Notice was dismissed, without leave to reapply, as the tenancy ended prior to the hearing.

The landlords' monetary claim in their application is dismissed, with leave to reapply.

The landlords have been granted recovery of their filing fee of \$100.

The landlords are granted a monetary order in the amount of **\$900** comprised of unpaid monthly rent owed by the tenant and their filing fee of \$100.

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: February 21, 2023

Residential Tenancy Branch