



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR-DR, MNR-DR, FFL
	Tenant:	CNR-MT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The applications were previously considered during a hearing that took place on January 3 and 10, 2023. As the Landlord did not attend the hearing on January 10, 2023, the arbitrator cancelled the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 11, 2022 (the 10 Day Notice) and ordered that the tenancy continue until otherwise ended in accordance with the Act. However, the Landlord applied for Review Consideration and, in a decision dated January 17, 2023, granted a new hearing.

The Landlord's Application for Dispute Resolution was first made on October 4, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was first made on August 4, 2022. The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a 10 Day Notice; and
- an order granting more time to dispute the 10 Day Notice.

The Landlord was represented at the hearing by GR, an agent. The Tenant attended the hearing on her own behalf. Both GR and the Tenant provided affirmed testimony.

On behalf of the Landlord, GR testified the Notice of Dispute Resolution Proceeding package was served on the Tenant in person and by registered mail on January 20, 2023. Canada Post registered mail receipts were submitted in support. Although the Tenant testified she did not receive these documents, I find it is more likely than not that they were served in accordance with section 89 of the Act and are deemed to have been received on January 25, 2023, in accordance with section 90 of the Act.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by email. GR acknowledged that he received them last week and had an opportunity to consider them. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

Preliminary and Procedural Matter – Extension of Time

On behalf of the Landlord, GR testified the 10 Day Notice was served on the Tenant by registered mail on July 11, 2022. Canada Post registered mail receipts showing the date and time of service, and tracking information, were submitted in support. Section 90 of the Act confirms that documents served by registered mail are deemed to be received five days later. Based on the testimony and documentary evidence before me, I find the 10 Day Notice was served on the Tenant by registered mail and is deemed to have been received by the Tenant on July 16, 2022. Pursuant to section 46(4) of the Act, the Tenant had until July 21, 2022 to either pay rent in full or dispute the 10 Day Notice.

The Tenant testified the 10 Day Notice was received on August 4, 2022, and that the application was made the same day. The Tenant testified that she was unable to dispute it before then because she was working out of town. No other justification was provided.

I find the Tenant did not dispute the 10 Day Notice on time in accordance with section 46(4) of the Act. However, section 66(1) of the Act permits the director to extend a time limit established by the Act only in "exceptional circumstances". Policy Guideline #36 describes exceptional circumstances as follows:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In this case, I find the Tenant did not dispute the 10 Day Notice on time in accordance with section 46(4) of the Act. I also find there is insufficient evidence before me to conclude there were exceptional circumstances upon which to extend the time limit to dispute the 10 Day Notice. The only explanation provided by the Tenant was that she was working out of town. I was not referred to any documentary evidence in support. As a result, pursuant to section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Accordingly, I grant the Landlord an order of possession which will be effective on February 28, 2023, at 1:00 p.m. The Tenant's application is dismissed without leave to reapply.

Issues

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on October 1, 2021. Rent of \$950.00 per month is due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$475.00 and a pet damage deposit of \$475.00, which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

On behalf of the Landlord, GR testified the Tenant did not pay rent when due. As noted on the 10 Day Notice, rent of \$8,075.00 remained unpaid at that time. The amount of rent outstanding was supported by financial statements submitted into evidence by the Landlord.

GR also testified that no further payments have been made and that an additional \$6,650.00 remains unpaid for the period from August 1, 2022 to February 28, 2023. GR confirmed the Tenant currently owes \$14,725.00.

In reply, the Tenant testified that she receives disability benefits of approximately \$1,400.00 per month. Of this amount, the Tenant testified that rent is paid directly to the Landlord. The Tenant testified that she believes rent has been paid. In support, the Tenant submitted a Confirmation of Assistance document dated March 1, 2022, which indicates that rent was paid to the Landlord on that occasion.

The Tenant also referred to a previous decision dated June 23, 2022. The file number of the related decision is included above for ease of reference. The Tenant testified that the previous decision confirmed rent was paid.

In response to the Tenant's evidence, GR testified that the Landlord has not received rent payments from the Ministry as alleged and referred to the financial statements submitted into evidence. GR also testified that the Tenant has refused to meet him at the Ministry office "many, many, many times" to clarify the rent issue. GR also referred to apparent discrepancies with respect to the font and arithmetic on the confirmation of Assistance document, suggesting it appears to have been altered.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, I find it is more likely than not that the Tenant did not pay rent when due and that the Landlord has established an entitlement to unpaid rent of \$14,725.00. The Landlord's evidence was supported by financial statements. Further, I accept that GR tried to resolve the issue with the Tenant at the Ministry office but that the Tenant did not attend. I also note the Tenant did not refer me to a statement from the Ministry which would provide reliable evidence of payment.

With respect to the decision dated June 23, 2022, referred to by the Tenant, the Tenant had applied for an order that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 22, 2022 (the March Notice) be cancelled. As the Landlord did not attend the hearing to provide evidence in support of the March Notice, it was cancelled. No findings were made with respect to the payment of rent when due. The Landlord submitted an application for review consideration on the basis of fraud but the application was dismissed, and the original decision issued on June 23, 2022 was confirmed. As no findings were made with respect to the payment of rent when due, I find this matter has not been decided and I am at liberty to consider whether rent was paid when due throughout the tenancy.

Considering the above, I find that the Landlord has demonstrated an entitlement to a monetary award of \$14,750.00 for unpaid rent. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$14,850.00.

Conclusion

The Landlord is granted an order of possession, which will be effective on February 28, 2023, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$14,850.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 24, 2023

Residential Tenancy Branch