



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, RP, LRE, LAT
OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. on March 17, 2023 concerning applications made by the tenant and by the landlord which have been joined to be heard together.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; more time to dispute a notice to end the tenancy; an order that the landlord make repairs to the rental unit or property; an order limiting or setting conditions on the landlord's right to enter the rental unit; and for an order permitting the tenant to change the locks to the rental unit. The landlord has applied for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. Since the landlord attended the hearing prepared to respond to the tenant's application, and the tenant has failed to attend, I dismiss the tenant's application in its entirety without leave to reapply.

The landlord testified that the tenant was served with the landlord's Notice of Dispute Resolution Proceeding hearing package and evidence by registered mail on December 15, 2022 and provided a tracking number. The landlord has also provided some late evidence, which was served to the tenant by dropping it in the tenant's mail box on March 7, 2023. I accept that, and all evidence provided by the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2022 was issued in accordance with the *Residential Tenancy Act*?

- Has the landlord established a monetary claim for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 1, 2020 and expired on October 31, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$1,320.00 was payable on the 1st day of each month, which was raised and is now \$1,346.00 per month effective January 1, 2023. On October 17, 2020 the landlord collected a security deposit from the tenant in the amount of \$660.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in an apartment complex, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on December 3, 2022 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by attaching it to the door of the rental unit. A copy of the Notice has been provided for this hearing and it is dated December 3, 2022 and contains an effective date of vacancy of December 13, 2022 for unpaid rent in the amount of \$870.00 that was due on December 1, 2022. The tenant is now in arrears of rent the sum of \$2,148.00, and the landlord has provided a handwritten spreadsheet for this hearing setting out the amounts and dates due and paid, which also includes late fees.

Analysis

Firstly, the record shows that the tenant has disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2022 and the tenant has provided a copy of a portion of that Notice. The tenant has also provided a copy of a One Month Notice to End Tenancy for Cause, but the tenant's application does not dispute it. The tenant's application does not dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2022.

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant has 5 days to dispute it or pay the rent in full. If the tenant does neither the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit within 10 days of service.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2022 and I find that it is in the approved form and contains information required by the law. The landlord testified that it was served by attaching it to the door

of the rental unit on December 3, 2022, which is deemed to have been served 3 days later. The tenant did not pay the rent, and has fallen further in arrears. The tenant did not dispute that notice, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2022 is in the approved form, and having dismissed the tenant's application to cancel other notices to end the tenancy, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be filed in the Supreme Court of British Columbia and enforced.

I have also reviewed the tenancy agreement and the landlord's spreadsheet. I accept the undisputed testimony of the landlord that rent was increased to \$1,348.00 effective on January 1, 2023. The tenancy agreement shows a \$30.00 fee for late rent, which is contrary to the law; a landlord may charge a late fee of \$25.00. The spreadsheet shows that the tenant paid \$660.00 in October, 2022, leaving a balance outstanding of \$660.00. Rent was paid in full for November, 2022, however the spreadsheet shows a \$30.00 late payment fee. The tenant paid \$1,110.00 in December, 2022, leaving an additional \$240.00 in arrears, which also includes a \$30.00 late fee. The tenant also paid \$1,560.00 in January, 2023 and \$660.00 for February, 2023 and \$660.00 for March, 2023. I have recalculated the amounts owed to the landlord as follows:

DATE	AMOUNT DUE	AMOUNT PAID	BALANCE DUE
October, 2022	\$1,320.00	\$660.00	\$660.00
November, 2022	\$1,320.00	\$1,350.00	\$630.00
December, 2022	\$1,320.00	\$1,110.00	\$840.00
January, 2023	\$1,346.00	\$1,560.00	\$626.00
February, 2023	\$1,346.00	\$660.00	\$1,312.00

March, 2023	\$1,346.00	\$660.00	\$1,998.00
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I find that the landlord has established a claim of \$1,998.00 for unpaid rent.

Since the tenancy agreement provides for a fee for late rent, I find that the landlord has established claims of \$25.00 for each of the 6 months October, 2022 through March, 2023, for a total of \$150.00.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$2,248.00. The tenant must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,248.00.

This order is final and binding and may be enforced.

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: March 17, 2023

Residential Tenancy Branch