



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, RR, PSF, OLC,
OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The tenant applied for:

- Cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”);
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65;
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f); and,
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlord applied for:

- an Order of Possession based on the 10-Day Notice pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

BD (the “landlord”) appeared and PL, the landlord’s assistant appeared at the hearing.

The landlord testified that they served the tenant with the Notice of Dispute Resolution Proceeding and evidence package on March 30, 2023, by registered mail. In support of this, the landlord provided a Proof of Service document and receipt containing a Canada Post tracking number.

Based on the uncontested affirmed testimony of the landlord and in accordance with section 88 and 90 of the Act, I find that the required documents were served on the tenant on March 30, 2023, and are deemed to have been received by the tenant on April 5, 2023, the fifth day after they were sent by registered mail.

The landlord and PL were given full opportunity under oath to be heard, to present evidence and to make submissions. The landlord and PL confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Preliminary Matters

Although I waited until 9:40 a.m. to enable the tenant to connect with the teleconference hearing scheduled for 9:30 a.m., the tenant did not attend.

Rules of Procedure 7.3 and 7.4 discuss the consequences of a party not attending a hearing.

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.

In accordance with the above, the hearing proceeded in the tenant's absence. I order the tenant's applications are dismissed in their entirety without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided affirmed testimony that the tenancy began on June 16, 2022. Rent is \$2,500.00 due on the first day of the month. The landlord collected a security deposit of \$1,250.00 which they continue to hold in trust. A copy of the written tenancy agreement is submitted into evidence.

The landlord testified that they served the 10-Day Notice to End Tenancy on the tenant on March 3, 2023, by registered mail. In support of this, the landlord has included a Proof of Service document and receipt containing a Canada Post Tracking Number. The Notice indicates that the tenant did not pay rent in the amount of \$3,500.00 which was due on March 1, 2023.

The landlord testified that the tenant failed to pay \$1,000.00 of the \$2,500.00 rent that was due on February 1, 2023, and did not pay any rent that was due on March 1, 2023. The \$3,500.00 indicated on the Notice represents the rent outstanding from February and March 2023. The landlord further testified that the tenant has not paid rent that was due April 1, 2023.

The landlord testified that the tenant is still residing in the unit. The landlord is seeking an Order of Possession and Monetary Order for \$6,000.00 in unpaid rent. The landlord is also seeking recovery of the filing fee they paid for their application from the tenant.

Analysis

Based on the uncontested affirmed testimony of the landlord and in accordance with section 89 and 90 of the Act, I find that the 10-Day Notice was served on the tenant on March 3, 2023, and is deemed to have been received by the tenant on March 8, 2023, the fifth day after it was sent by registered mail.

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, regulations, or the tenancy agreement. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10-Day Notice.

I accept the landlord's undisputed testimony that the 10-Day Notice was issued because the tenant failed to pay \$1,000.00 in rent in February and did not pay any rent in March 2023. Therefore, I find on a balance of probabilities that the Notice was issued for a valid reason, namely, the non-payment of rent.

While the 10-Day Notice issued to the tenant is a historical version of the Residential Tenancy Branch form, I find that it complies with the form and content requirements of section 52 and does not appear to have interfered with the tenant's ability to make an application to cancel the 10-Day Notice within the required timeframe. As authorized by section 10 of the Act, I find the use of the historical version of the 10-Day Notice was of no prejudice to the tenant and is approved for the purpose of these applications.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay the outstanding \$6,000 in unpaid rent to the landlord.

The landlord continues to hold the tenant's security deposit in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the Monetary Order.

The landlord is entitled to recovery of the filing fee paid for their application from the tenant.

Conclusion

The landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlord's favour in the amount of \$4,850.00 as follows:

| Item | Amount |
|---|------------|
| Rent February 2023 | \$1,000.00 |
| Rent due March and April 2023 (2 x \$2,500.00) | \$5,000.00 |
| Filing Fee | \$100.00 |

| | |
|-----------------------------|-------------------|
| Security Deposit | -\$1,250.00 |
| Total Monetary Order | \$4,850.00 |

The tenant must be served with this Order as soon as possible. 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: April 28, 2023

Residential Tenancy Branch