



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenant) C.M.	910097470	CNR-MT
(Landlord) K.L.	910097535	OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant applied for:

- more time to apply to cancel the eviction notice; and
- an Order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated January 3, 2023 ("10 Day Notice").

The Landlord applied for:

- an order of possession for unpaid rent, further to having served the 10 Day Notice;
- a monetary order of \$2,080.00 for outstanding unpaid rent from the Tenant; and
- recovery of his \$100.00 application filing fee;

The Landlord and two agents for the Landlord, B.D. and A.D. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on January 16, 2023; however, the Tenant did not attend the teleconference hearing scheduled for April 28, 2023, at 11:00 a.m. (Pacific Time). The phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to

call into the hearing were the Landlord and his Agents, who indicated that they were ready to proceed.

I explained the hearing process to the Landlord and his Agents and gave them an opportunity to ask questions about it.

During the hearing the Landlord and the Agents were given the opportunity to provide their evidence orally and respond to the my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Further, the Agents said that they served the Tenants with the Landlord’s Notice of Hearing and evidentiary documentation via registered mail sent on January 17, 2023. They provided Canada Post tracking numbers as evidence of service.

The Agents served the Tenants with the Notice of Hearing in compliance with section 88 of the *Residential Tenancy Act* (“Act”), sent via registered mail on January 17, 2023. The Agents provided tracking numbers and upon checking the Canada Post tracking guide, I discovered that the Tenants failed to pick up the registered mail packages, which were available for pick up on January 19, 2023. According to Residential Tenancy Branch Policy Guideline 12, “Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing.” Accordingly, I find the Agents served the Notice of Hearing to the Tenants on January 22, 2023, five days after mailing.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (“Rules”) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Landlord, his Agents and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on April 28, 2022, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant’s Application without leave to reapply.**

Preliminary and Procedural Matters

The Parties provided their email addresses in their Applications, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord had named another Party, K.L., as a tenant; however, in the hearing, the Landlord said that K.L. had already moved out. As such, I used the Parties named in the Tenant's application for this Decision.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Landlord that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The Agents said that the amount of rent owing at the time of the Application has risen, and that it is now \$8,320.00, rather than the \$2,080.00 that was owing when the Landlord's application was served. The Agents also requested reimbursement of rent for May 2023, as the Tenant has not served the Landlord with the required 30 day notice of the end of the tenancy, and he does not have sufficient time to do this. As such, it is more likely than not that he will continue to live in the rental unit and not pay rent on May 1, 2023, three days from the hearing date.

The Agents requested that their Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after considering the increase in unpaid rent over the past months, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$2,080.00 to \$10,400.00.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to a monetary order, and if so, in what amount?

- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agents confirmed that the fixed-term tenancy began on February 1, 2021, with a current monthly rent of \$2,080.00, due on the first day of each month. The Agents said that the Tenants paid the Landlord a security deposit of \$1,000.00, and a pet damage deposit of \$1,000.00. The Agents confirmed that the Landlord still holds these deposits in full.

In the hearing, the Agents confirmed that they served the Tenant with the 10 Day Notice, which was signed and dated January 3, 2023, and which has the rental unit address. The Agents said they served the Tenant with the 10 Day Notice on January 3, 2023, by taping it to the door of the rental unit. The Agents submitted a photograph of the notice taped to the Tenant's door as evidence of service. The 10 Day Notice had an effective vacancy date of January 14, 2023, which is automatically corrected by section 53 of the Act to be January 16, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$2,080.00 in rent that was owed to the Landlord on January 1, 2023. Again, the Agents said the Tenant has not paid any rent since December 2022.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

The Tenant applied for dispute resolution, but he did not attend the hearing to pursue his claim against the Landlord's burden of proof. I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on January 6, 2023, three days after it was posted on the rental unit door. I also find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

Section 26 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, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he is owed \$10,400.00 in unpaid rent as of May 1, 2023. There is no evidence before me that the Tenant had a right to deduct any rent from the amount owing to the Landlord.

I find that the amount of rent outstanding listed on the 10 Day Notice of \$2,080.00 is incorrect, as it was based on outstanding rent amount as of January 1, 2023. Given that the Landlord has not received a 30 day notice to end the tenancy from the Tenant, and given the Tenant's persistent failure to pay rent since December 2022, I find it is more likely than not that the Tenant will continue to live in the rental unit without paying rent until the Landlord has him removed. Accordingly, I **award the Landlord with \$10,400.00** in unpaid rent from the Tenant, pursuant to sections 26, 46 and 67 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$8,320.00 in rent owed for January through April 2023. Therefore, the **Tenant's Application** to cancel the 10 Day Notice is **dismissed without leave to reapply**.

I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. The effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for the last four months. As a result, the **Order of Possession will be effective two days after service** of the Order on the Tenant.

Given his success in this matter, I also award the Landlord with recovery of his **\$100.00** application filing fee from the Tenant, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$1,000.00 security deposit and \$1,000.00 pet damage deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain these deposits pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Order of \$8,500.00** for the remainder of the awards owing to the Landlord by the Tenant, pursuant to section 67 of the Act.

Conclusion

The Tenant did not attend the hearing, and I have found that he has not paid rent for the last four months. The Tenant's application is dismissed without leave to reapply.

The Landlord is awarded recovery of **\$10,400.00** in unpaid rent as of May 1, 2023. The Landlord is also awarded recovery of his **\$100.00** application filing fee from the Tenant.

The Landlord is authorized to retain the Tenant's \$1,000.00 security deposit and \$1,000.00 pet damage deposit in partial satisfaction of the Landlord's monetary awards.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the Landlord a **Monetary Order of \$8,500.00** for the remainder of the awards owing to the Landlord by the Tenant.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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