



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding DORSET REALTY LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR, MNDC, OLC, FF
For the landlord: OPR-DR, MNR-DR, FF

Introduction

This hearing was convened as the result of the cross applications for dispute resolution (application) of the parties seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the landlord;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee.

The landlord applied for:

- an order of possession of the rental unit pursuant to the 10 Day Notice served to the tenant;
- a monetary order for unpaid rent;
- recovery of the cost of the filing fee.

The landlord's agent (landlord) attended the hearing; the tenant did not attend. The landlord was affirmed. The landlord said that they received the tenant's application.

The landlord submitted they served the tenant with their application by registered mail. The landlord filed the Canada Post tracking number showing proof of service, verifying the date of service was December 29, 2022. I find the landlord submitted sufficient

evidence to prove the tenant was served with the landlord's application as required under the Act.

The hearing proceeded in the tenant's absence and continued for 15 minutes. 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 Matter –

Despite having their own hearing scheduled for 9:30 a.m. on April 28, 2023, the tenant failed to attend.

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 their application dismissed, without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy start date of January 1, 2022, monthly rent is \$1,350, parking is \$25, and the tenant paid a security deposit of \$675.

The landlord submitted evidence that on December 12, 2022, they served the tenant with the Notice, by attaching it to the tenant's door, listing a total unpaid rent of \$1,350 and unpaid utility charges of \$17.79 owed as of December 1, 2022. The effective vacancy date listed on the Notice was December 19, 2022. The Notice was filed into evidence.

The landlord submitted that the tenant failed to pay the rent listed on the Notice within 5 days, and instead, paid the rent for December and January on January 16, 2023. The landlord said that as of the day of the hearing, the tenant owed a total of \$134.95 in unpaid monthly rent, including late fees.

Evidence additionally filed by the landlord included a tenant ledger sheet and a monetary order worksheet.

Analysis

Order of Possession –

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 pay the full rent due, 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 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.

In this case, the landlord served the tenant with the Notice on December 12, 2022, and the effective date listed was December 19, 2022, which is 7 days after service. I find the corrected effective date of the 10 Day Notice is December 22, 2022, the 10th day after service.

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, the tenant failed to attend the hearing to prove rent was not owed, and their application was dismissed.

I grant the landlord's application.

I find that the landlord is entitled to, and I **grant** an order of possession for the rental unit effective **2 days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **informed** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the tenant.

Monetary Order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owes an outstanding balance of **\$134.95** in unpaid monthly rent and late fees, through the date of the hearing. I find the landlord has established a monetary claim in that amount.

I also grant the landlord recovery of their filing fee of **\$100**, for a total monetary award of **\$234.95**.

At the landlord's request, I authorize the landlord to deduct the amount of \$234.95 from the tenant's security deposit of \$675, to satisfy this monetary award.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary award for unpaid rent and late fees has been granted in the above terms.

The tenant's application is dismissed, without leave to reapply.

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: April 28, 2023

Residential Tenancy Branch