



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE
 OPR, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant (Tenants' Application) under the *Residential Tenancy Act* (the Act) on January 16, 2023, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); and
- An order suspending or setting conditions on the Landlord's right to enter the rental unit.

This hearing also dealt with a cross-application filed by the Landlord (Landlord's Application) under the Act on January 25, 2023, seeking:

- Enforcement of the 10 Day Notice;
- Recovery of unpaid rent;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 am on May 11, 2023, and was attended by the agent for the Landlord GC (Agent), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Agent was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me

and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceedings were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as follows. The Agent testified that on February 2, 2023, the Notice of Dispute Resolution Proceeding (NODRP) was sent to the Tenant at the rental unit address by registered mail. The Agent provided me with the registered mail tracking information and stated that it was received on February 18, 2023. The Agent also acknowledged receipt of the Tenant's NODRP.

The Agent stated that the Landlord's documentary evidence was subsequently mailed to the Tenant by registered mail on April 22, 2023, and provided me with the registered mail tracking information. Although the Agent stated that the registered mail package went unclaimed, I am satisfied based on the Agent's affirmed and undisputed testimony and the registered mail tracking information, that the package was sent to the rental unit address, and that the Tenant is still residing in the rental unit. As a result, I find that they were deemed served on April 27, 2023, pursuant to section 90(a) of the Act and Policy Guideline #12.

Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Landlord on February 2, 2023. As I am satisfied as set out above that the NODRP was sent to the Tenant by registered mail at the rental unit address that same day, I therefore find that the Landlord complied with section 59(3) of the Act and rule 3.1 of the Rules of Procedure. I verified that the hearing information contained in the NODRP was correct and note that the Agent was able to attend the hearing on time using this information. As a result, the hearing of the Landlord's Application proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 14-minute duration of the hearing, no one attended on behalf of the Tenant. The Tenant's Application was dismissed without leave to reapply pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was served in accordance with the Rules of Procedure; I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

The Agent stated that the amount of outstanding rent has increased since the time the Landlord's Application was filed. The Agent therefore sought to amend the Landlord's Application at the hearing, pursuant to rule 4.2 of the Rules of Procedure, to increase the amount of outstanding rent owed to \$26,100.00. The Application was amended accordingly.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession based on the 10 Day Notice?

Is the landlord entitled to recovery of unpaid rent in the amount of \$26,100.00?

Is the Landlord entitled to retain the Tenant's \$2,175.00 security deposit towards any amounts owed?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The Agent stated that rent in the amount of \$4,350.00 is due under the tenancy agreement on the first day of each month. A copy of the tenancy agreement was submitted. The Agent stated that when the Tenant did not pay rent as required in December of 2022 and January of 2023, the 10 Day Notice was posted to the door of the rental unit and sent to the Tenant by email on January 14, 2022. The 10 Day Notice in the documentary evidence before me from both the Landlord and the Tenant is on the Branch form, is signed and dated January 14, 2023, has an effective date of February 1, 2023, and states that as of January 1, 2023, the Tenant owed \$8,700.00 in outstanding rent for December 2022 and January 2023. In the Tenant's Application, filed on January 16, 2023, they acknowledged receipt of the 10 Day Notice on January 14, 2023.

The Agent stated that the Tenant has not paid any rent and currently owes \$26,100.00 in outstanding rent for December 1, 2022 – May 31, 2023. The Agent therefore sought a

two-day order of possession, recovery of the \$100.00 filing fee, authorization to withhold the \$2,175.00 security deposit towards the outstanding rent, and a monetary order for the remaining balance owed.

Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. Although the Tenant disputed the 10 Day Notice, which I find was served on and received by the Tenant on January 14, 2023, within the period set out under section 46(4)(b) of the Act, no evidence or testimony was presented that the Tenant had a right under the act to deduct or withhold rent. As a result, I find that they did not. Based on the above, and as I am satisfied that the 10 Day Notice complies with section 52 of the Act, I end the tenancy as of todays date, May 11, 2023, and I grant the Landlord an order of possession for the rental unit. The order of possession will be effective two days after service, pursuant to section 55(1) of the Act.

Based on the affirmed and uncontested testimony of the Agent, and the documentary evidence before me, I am satisfied that the Tenant owes \$21,750.00 in outstanding rent for December 1, 2022 – April 30, 2023, and I grant the Landlord recovery of this amount. I also grant the Landlord outstanding rent between May 1, 2023 – May 11, 2023, in the amount of \$1,573.15, calculated at a per diem rate of \$143.01. The Landlord may seek compensation for overholding the rental unit past that date, if applicable, and should they wish to do so, by filing an Application for Dispute Resolution with the Branch.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I grant the Landlord authorization to withhold the \$2,175.00 security deposit in partial repayment of the above noted amounts owed.

Pursuant to section 67 of the Act, I therefore grant the Landlord a \$21,248.15 monetary order for the remaining balance owed, and I order the Tenant to pay this amount to the Landlord.

Conclusion

The Tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 55(1) of the Act, I grant an order of possession to the Landlord effective **two days after service** 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.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$2,175.00 security deposit.

Pursuant to section 67 of the Act, I grant the Landlord a **\$21,248.15** monetary order. 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 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 Branch under Section 9.1(1) of the Act.

Dated: May 11, 2023

Residential Tenancy Branch