



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT / OPU-DR, MNU-DR, FFL

Introduction

The hearing was convened following applications for dispute resolution (“Applications”) from both parties, which were crossed to be heard simultaneously.

The Tenant seeks the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”); and
- to recover the cost of the filing fee under section 72 of the Act.

The Landlord requests the following:

- an Order of Possession after issuing the Notice under section 55(2)(b) of the Act,
- a Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act; and
- authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act.

The Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 9:50 A.M. to enable the Tenant to connect with this teleconference hearing scheduled for 9:30 A.M., the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator.

Rule 7.3 of the *Rules of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application with or without leave to reapply.

Accordingly, in the absence of any attendance at this hearing by the Tenant or their Agent, I dismiss the Tenant's Application without leave to reapply.

The Landlord testified they served the Notice of Dispute Resolution Package ("Materials") on the Tenants by registered mail on April 15, 2023. The tracking numbers are provided on the first page of this Decision. I find that pursuant to sections 89 and 90 of the Act that Landlord's Materials were sufficiently served to the Tenant.

The Landlord stated they did not receive the Tenant's Materials and they were not aware of any Application filed by the Tenant. I find the Tenant did not serve their Materials in accordance with section 89 of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord confirmed the following regarding the tenancy. The tenancy started on December 1, 2019 with monthly rent of \$1,183.20 due on the first day of the month. The Landlord also testified that a security deposit of \$550.00 was taken, which they still retain, and that there was no pet damage deposit taken. The Tenant still occupies the rental unit.

A copy of the written tenancy agreement ("Tenancy Agreement") was entered into evidence by the Landlord. The Tenancy Agreement provides only one name as the Landlord which differed to that shown on the Application. The Landlord confirmed that their father's name is shown on the Tenancy Agreement, though both their names are on the title of the rental property. As the Landlord manages the property, they were in agreement for just their name to be shown on this Decision.

The Landlord testified as follows. The Tenant had not paid utilities of \$700.00 so they sent a written demand on December 1, 2022. This amount was not paid in full by the Tenant. The Tenant also did not pay rent due January 1, 2023. A written demand for outstanding rent and utilities, which now amounted to \$853.00, was issued on January 15, 2023. A 10 Day Notice to End Tenancy for unpaid rent was also issued to the Tenant in January 2023. The Tenant paid the rent within five days of receipt, canceling the notice to end tenancy, and they made a partial payment towards utilities totalling \$216.80. Copies of the written demands and utility bills were entered into evidence by the Landlord.

The rent due on March 1, 2023 went unpaid. The Landlord spoke with the Tenant regarding the matter of outstanding rent on March 1, 2023 and the Tenant indicated they would not be paying rent. The Notice was issued March 1, 2023 by attaching to the door of the rental unit. The Tenant has not made any payments to the Landlord since the Notice was issued.

The Landlord stated that rent due April 1, 2023 also went unpaid so they are seeking two month's outstanding rent from the Tenant amounting to \$2,366.40. The Landlord confirmed the amount of outstanding utilities, as of April 1, 2023, was \$636.20 which takes into account the partial payment made by the Tenant in January 2023. The total amount sought by the Landlord from the Tenant is \$3,002.60. The Landlord also seeks an Order of Possession.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept the Landlord's undisputed testimony that rent due March 1, 2023 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on March 1, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on March 4, 2023, the third day after it is attached in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read March 14, 2023 instead of March 10, 2023.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a).

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) 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. I find that the Tenancy ended on March 14, 2023. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

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 \$3,002.60 in unpaid rent and utilities to the Landlord.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act. As the Tenant's Application was not successful, they must bear the cost of the filing fee for their Application.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent and utilities	\$3,002.60
Filing fee	\$100.00
Less: security deposit	(\$550.00)
Total	\$2,552.60

Conclusion

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

The Landlord's Application is granted.

The Landlord is issued an **Order of Possession**.

The Landlord is issued a **Monetary Order**.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 01, 2023

Residential Tenancy Branch