



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNDCT, OLC, FFT
OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on March 1, 2023. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause, for a monetary order for compensation for losses or other money owed, for an order that the Landlord comply with the *Act*, and to recover the filing fee for their application.

The Tenant filed an amendment to their Application for Dispute Resolution on March 8, 2023. The Tenant applied to cancel a 10-day Notice to End Tenancy for Unpaid rent dated March 2, 2023.

The Landlord’s Application for Dispute Resolution was made on March 16, 2023. The Landlord applied to enforce a 10-Day Notice for Unpaid Rent (the 10-Day Notice) dated March 2, 2023, for a monetary order for unpaid rent and utilities and to recover the filing fee paid for their application.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they have exchanged the evidence that I have before me in these proceedings

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary issue – Claims Amended During Hearing

At the outset of these proceedings, the Landlord and the Tenant agreed that this tenancy had ended before the date of these proceedings. The Landlord confirmed that they have possession of the rental unit.

As this tenancy ended before the date of these proceedings, I find that it is no longer necessary that a decision is made regarding the validity of the Notices to end tenancy or the need for an order of possession to the rental unit for this tenancy. Therefore, I am dismissing the Tenant's claim to cancel a One-Month Notice to End Tenancy for Cause, and to cancel a 10-day Notice to End Tenancy for Unpaid rent dated March 2, 2023. I am also dismissing the Landlord's claim to enforce a 10-day Notice to End Tenancy for Unpaid rent dated March 2, 2023.

Additionally, It was noted that the Tenant did not submit and detailed calculation of their monetary claim. The Rules of Procedure section 2.5 states the following:

Documents that must be submitted with an Application for Dispute Resolution

"To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution."

The Tenant agreed that they had not filled a monetary work sheet or provided any form of detailed calculation of their monetary claim.

Due to the absence of this required document, I find it appropriate to dismiss the Tenant's claim for a monetary order for compensation for losses or other money owed, with leave to reapply.

As the Tenant's full application has been dismissed, I find that they are not entitled to recover the \$100.00 filing fee they paid for this hearing.

I will continue in these proceedings on the remaining claims before me, consisting of, the Landlord's claims for a monetary order for unpaid rent and to recover the filing fee paid for their application.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy agreement signed between these parties recorded that the tenancy began on June 1, 2022, as a one-year fixed term tenancy. The parties agreed that the rent for this tenancy was set in the amount of \$2,800.00 and was to be paid by the first day of each month, and that the Tenant paid a \$1,3450.50 security deposit at the outset of this tenancy. The parties agreed that no pet damage deposit was paid for this tenancy. Both the Landlord and the Tenant submitted copies of the tenancy agreement into documentary evidence.

The Tenant submitted that they moved out of the rental unit as of April 1, 2023. The Landlord submitted that they were not aware that the Tenant had moved out until May 1, 2023.

The Landlord testified that the Tenant has not paid the rent for March and April 2022, in the amount of \$5,800.00. The Landlord is requesting a monetary order for the outstanding rent.

The Tenant agreed that they have not paid the rent for March and April 2023. The Tenant submitted that they moved out of the rental unit on April 1, 2023, in accordance with the Landlord's Notice to end their tenancy due to unpaid rent.

The Landlord agreed that they had issued the Notice but that the Tenant had filed to dispute the 10-Notice, serving them with hearing Notification Documents and that they had not been informed that the Tenant no longer wished to dispute the Notice.

The Tenant agreed that they did file to dispute the Notices issued by the Landlord and that they did not tell the Landlord that they were going to comply with the Notice and move out.

The Landlord submitted a copy of a Two Month Notice to end tenancy for the Landlord's Use of the Property dated February 17, 2023, and a picture of this same notice attached to the front door of the rental unit, into documentary evidence.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid for March and April 2023. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

However, after reviewing the full documentary submission of the Landlord, I noted that the Landlord had also issued the Tenant a Two Month Notice to End Tenancy for the Landlord's Use of the Property dated February 17, 2023. Pursuant to section 51 of the *Act*, a landlord who issues a tenant a Two Month Notice to End Tenancy for the Landlord's Use of the Property must pay the tenant the equivalent of one-month rent as compensation. As this Notice was issued in February 2023, and the Landlord is claiming for the unpaid rent for both March and April 2023, I find that on a balance of probabilities that this one-month compensation, due as a result of the Landlord issuing this Two Month Notice to End Tenancy for the Landlord's Use of the Property, has not been paid to the Tenant for this tenancy. Therefore, I find that the rent for April 2023 has been covered by the compensation due to the Tenant pursuant to section 51(1) of the *Act*.

Accordingly, I find that the Landlord has established an entitlement to a monetary award in the amount of \$2,900.00 in unpaid rent for March 2023. I grant permission to the Landlord to retain the security deposit they are holding for this tenancy in partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$1,657.50, consisting of \$2,900.00 in rent, and \$100.00 in the recovery of the filing fee for this hearing, less the \$1,342.50 security deposit they are holding for this tenancy.

Conclusion

I find for the Landlord under sections 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$1,657.50**. 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, 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: June 27, 2023

Residential Tenancy Branch