



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the tenant: CNR, MT, AS
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;
- an order extending the time to file an application disputing the Notice issued by the landlord; and
- authorization to assign or sublease the tenancy.

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; and
- recovery of the cost of the filing fee.

The landlord attended the hearing; the tenant did not attend. The landlord was affirmed. The landlord denied receiving the tenant's application and evidence.

The landlord submitted they served the tenant with their application by registered mail. The Canada Post tracking number showing proof of service is listed on the cover page of this Decision. 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 –

Although this matter was scheduled to be heard as cross-applications, the tenant was deemed to have abandoned their application by the RTB due to inaction after initial filing. For this reason, I cannot make a Decision on the tenant's application.

Additionally, the landlord stated that the tenant vacated the rental unit without notice to the landlord at some unknown time after they were served with the 10 Day Notice. The landlord testified they believed the tenant was still in the rental unit on April 1, 2023.

The landlord confirmed they no longer need an order of possession and wanted to proceed on their monetary claim.

Issue(s) to be Decided

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

Background and Evidence

The landlord filed a written tenancy agreement showing a tenancy start date of May 1, 2022, monthly rent of \$2080, due on the first day of the month, and a security deposit of \$1025 paid by the tenant.

The landlord submitted evidence that on March 14, 2023, they served the tenant with the Notice, by attaching it to the tenant's front and back doors, listing a total outstanding unpaid rent of \$6920. The effective vacancy date listed on the Notice was March 26, 2023. The Notice was filed into evidence.

The landlord submitted that the tenant failed to pay the rent listed on the Notice within 5 days, or at all, and did not pay any rent prior to vacating in April, 2023. The landlord said that as of the day of the hearing, the tenant owed a total of \$9000 in unpaid monthly rent. This includes the amount of \$6920 unpaid rent listed on the Notice and the monthly rent of \$2080 for April 2023, which was owed and not paid.

The landlord's relevant evidence also included a monetary order worksheet and accounting records.

Analysis

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.

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 initially filed an application to dispute the Notice, the tenant abandoned their application. Also, the tenant failed to attend the hearing to prove rent was not owed.

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owes an outstanding balance of **\$9000** in unpaid monthly rent. 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 **\$9100**.

At the landlord's request, I authorize the landlord to keep the tenant's security deposit of \$1025 in partial satisfaction of their monetary award of \$9100. I grant the landlord a monetary order for the balance due of **\$8075**. Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for a monetary award for unpaid rent and recovery of the filing fee has been granted in the above terms.

The landlord's request for an order of possession was determined to be a moot point as the tenant vacated the rental unit sometime in April 2023.

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: July 07, 2023

Residential Tenancy Branch