



Dispute Resolution Services

Page: 1

Residential Tenancy Branch

Ministry of Housing

DECISION

Dispute Codes CNR, LRE, FFT
OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The landlord applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

The tenant applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55 of the Act
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1) of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

HL (the “Landlord”) and NH (the “Tenant”) appeared at the hearing.

Both parties testified that they served the other party with a copy of their application materials and evidence by registered mail and provided Canada Post Tracking Numbers to support the same. However, neither party acknowledged receipt of the other's application materials or evidence.

It became apparent during the hearing that both parties were aware of the other parties' applications and none of the relevant facts of the case are in dispute. On that basis, I proceeded with the hearing in the absence of confirmation of service.

Preliminary Issue – Settlement

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a partial resolution of their dispute.

Both parties agreed to the following final and binding settlement of some of the issues currently under dispute at this time:

1. The Tenant will vacate the rental unit on or before July 31, 2023, not later than 5:00 p.m.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Evidence was providing showing that the tenancy commenced on December 1, 2022, by way of written agreement. Monthly rent is \$3,100.00 and is payable on the first of each month. The Tenant paid the Landlord a security deposit of \$1,550.00, which the

Landlord continues to hold in trust for the tenant. A copy of the written tenancy agreement is submitted into evidence.

The Landlord testified that they served the Tenant with the 10-Day Notice in person on May 11, 2023. The Tenant acknowledge receipt of the same.

The Landlord testified that the 10-Day Notice was issued because the Tenant failed to pay rent in the amount of \$3,100.00 that was due on May 1, 2023. The Landlord testified that the Tenant has since made one payment in the amount of \$1,000.00 on June 26, 2023, but has not paid rent for June or July 2023. The Landlord testified that rent is currently outstanding in the amount of \$8,300.00. The Landlord is seeking a monetary order for this amount.

The Tenant stated that they do not dispute the Landlord's statement and agreed that \$8,300.00 in rent is currently outstanding. The Tenant stated that they are currently facing difficult financial circumstances that are out of their control.

Analysis

Based on the agreement of the parties, I find that the Tenant was served with the 10Day Notice in accordance with section 89 of the Act on May 11, 2023.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent.

There are six lawful reasons for a tenant to withhold rent under the Act.

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

In this case, the Tenant has not established that they withheld rent for a lawful reason. Rather, the parties agree that rent is currently outstanding in the amount of \$8,300.00.

Based on the foregoing and in accordance with section 67 of the Act, I find that the Landlord is entitled to a monetary order in the amount of \$8,300.00.

The Tenant is ordered to pay the outstanding \$8,300.00 in unpaid rent to the Landlord.

As the Landlord was successful in their application, they are entitled to recover the filing fee paid for their application from the Tenant.

As this tenancy is ending, I find that the Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to section 70(1) of the Act is no longer applicable to their circumstances. On that basis, the Tenant's application pursuant to section 70(1) of the Act is dismissed without leave to reapply.

Conclusion

To give effect to the partial settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlord, which is to take effect at 5:00 p.m. on July 31, 2023. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of \$8,400.00 as follows:

Item	Amount
Outstanding Rent	\$8,300.00
Filing Fee	\$100.00
Total Monetary Order	\$8,400.00

The Tenant must be served with this Order. 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: July 07, 2023