



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR MNRL MNDCL FFT FFL OPR

Introduction

The tenant sought an order cancelling a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) and a claim to recover the cost of the application fee, under sections 46 and 72, respectively, of the *Residential Tenancy Act* (the “Act”).

The landlord sought an order of possession based on the Notice and a monetary order for unpaid rent, unpaid late fees, unpaid parking fees, and a claim to recover the cost of the application fee, under sections 26, 46, 55, 67, and 72 of the Act.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to compensation for unpaid rent, late fees, and parking fees?
4. Is either party entitled to recover the cost of their application fee?

Background and Analysis

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities (meaning “more likely than not”). I have considered the parties’ testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

The tenancy in this dispute began on December 14, 2019. Monthly rent is \$1,112.94 and it is due on the first day of the month. There is a security deposit of \$540.00. A copy of the written tenancy agreement was in evidence.

The landlord's representatives (hereafter the "landlord" for brevity) testified that they served the Notice in person on the tenant on September 6, 2023. All pages of the Notice were served and were in evidence before me. The Notice was issued because the tenant had not paid rent in the amount of \$1,112.94 that was due September 1.

The landlord testified that the tenant has not paid rent for September and for October and that rent arrears now total \$2,225.88 (as of October 24, 2023). In addition, the tenant owes \$50.00 in late rent fees (\$25.00 for two months), and \$20.00 in parking fees (\$10.00 for two months).

The tenant acknowledged not paying rent for September and October. However, he testified about his car being towed (without the landlord purportedly giving him sufficient notice about the risk of it being towed) and that he offered to pay the rent minus the towing costs. He explained that the landlord refused to accept a partial payment of rent. Last, the tenant expressed some confusion regarding the late rent fees.

Section 26 of the Act requires that tenants pay rent in full on the day that it is due. Section 46 of the Act permits a landlord to issue a notice to end the tenancy when a tenant does not comply with section 26.

In this dispute, the landlord issued the Notice after the tenant failed to pay his rent on September 1. To date, the tenant has not paid any rent for September or October. In addition, the tenant owes the landlord outstanding late fees and parking fees. While the cost of having his car towed is a significant inconvenience, the tenant does not have a legal right under the Act to arbitrarily deduct the towing costs from his rent.

Taking into consideration all the oral and documentary evidence before me, I conclude that the tenant has failed to raise any ground on which the Notice may be cancelled. Conversely, the landlord has proven the reason for issuing the Notice.

Thus, pursuant to section 55 of the Act I dismiss the tenant's application and uphold the Notice. The landlord is granted an order of possession of the rental unit. A copy of the order of possession is issued with this decision to the landlord who must serve a copy of the order of possession upon the tenant forthwith. The order of possession shall have an effective date of October 31, 2023, at 1:00 p.m.

Based on the evidence before me, I further find that the landlord is entitled to a monetary order for unpaid rent, unpaid late fees, and unpaid parking fee under section 55(1.1) of the Act. For this reason, I award the landlord compensation in the amount of \$2,295.88.

As the landlord succeeded in their application, they are granted an additional \$100.00 for the cost of their application fee.

In total, the landlord is awarded \$2,395.88.

Upon the conclusion of the tenancy on October 31, 2023, the landlord may retain the full amount of the security deposit in partial satisfaction of the above-noted awarded.

The balance of the amount (\$1,858.38) is payable and due by the tenant. A monetary order in this amount is issued with this decision to the landlord, who must serve a copy of the monetary order upon the tenant forthwith.

Conclusion

For the reasons stated above, it is hereby

ORDERED that the tenant's application is dismissed, without leave to reapply;

ORDERED that the landlord is granted an order of possession;

ORDERED that the landlord is awarded \$2,395.88, authorized to retain the \$537.50 security deposit, and granted a monetary order; and,

ORDERED that the tenancy is ended effective October 31, 2023 at 1:00 p.m.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to those grounds provided under section 79 of the Act or by an application under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: October 25, 2023

Residential Tenancy Branch