



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNR, MNDCT, RR, RP, OLC, FFT
Landlord: OPR, OPN, MNRL-S, FFL

Introduction

On October 11, 2023, the Tenant filed their Application at the Residential Tenancy Branch seeking:

- to dispute the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”);
- compensation for monetary loss/other money owed;
- reduction in rent for repairs/services/facilities not provided;
- repairs to the rental unit
- the Landlord’s compliance with the legislation and/or tenancy agreement;
- for reimbursement of the Application filing fee.

On October 16, the Landlord submitted their Application, seeking:

- an order of possession in line with the 10-Day Notice;
- an order of possession in line with the Tenant’s notice to end the tenancy
- recovery of unpaid rent – request to retain deposit(s)
- for reimbursement of the Application filing fee.

The Landlord’s Application was crossed to that of the Tenant that was already in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 16, 2023. The Landlord attended the scheduled hearing; the Tenant did not attend.

Preliminary Matter – Tenant’s attendance

The Landlord at the start of the hearing stated they received the Notice of Dispute Resolution from a third party, not the Tenant. This was from a company entity that the Tenant used to pay rent to the Landlord. As stated by the Landlord in the hearing: “this is not a way to serve documents.”

The Tenant did not attend the hearing; therefore, based on what the Landlord, who was the sole attendee, provided, I conclude the Tenant did not properly serve the Notice of Dispute Resolution Proceeding to the Landlord.

Additionally, the Tenant did not attend the hearing, although they left the teleconference hearing open until 11:15am to enable the Tenant to call in to this teleconference hearing scheduled for 1:00am. I confirmed correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, an arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant’s Application in its entirety, without leave to reapply.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding to the Tenant

The Landlord presented that they notified the Tenant of their Notice of Dispute Resolution Proceeding by attaching that document, and other hearing information, to the door of the rental unit on October 19, 2023. The Landlord provided a ‘proof of service’ document attesting to this, signed by a witness who observed the posting.

The Landlord provided that they served evidence to the Tenant at this same time as part of the same package.

From this, I conclude the Landlord fully informed the Tenant about the Application they made to the Residential Tenancy Branch, and provided the required evidence. On this basis, I give the Landlord’s evidence full consideration in this matter.

Issues to be Decided

Is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts owing, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to reimbursement for the Application fee for either of their Applications, pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and submissions before me. Only the evidence and submissions relevant to my conclusion, and the outcome of this hearing, are set out in this decision.

The Landlord on their Application provided that the tenancy started on April 15, 2019. The Landlord's indication is that rent was \$8,976 per month as of January 1, 2023, and the Tenant paid a security deposit of \$4,400.

The Landlord issued the 10-Day Notice on October 4, 2023. The Landlord provided a copy of this document in their evidence. The full 3-page document on page 2 shows the Landlord's indication that the Tenant failed to pay the rent amount of \$8,976 on October 1, 2023 as required by the agreement. The 10-Day Notice gives the end-of-tenancy date as October 14, 2023.

As described in the hearing, the Landlord stated that the Tenant was planning to move out on their own, and planned to use the security deposit to pay that month's rent.

The Landlord in the hearing provided that the Tenant did not pay the following month's rent for November 2023. The Landlord provided another amount of \$1,325 as owing for September. In their communication with the Tenant, the Tenant provided that they would be out of the country, and they asked the Landlord to deal with the other third party who was occupying the rental unit. As of the date of the hearing, the third party was still occupying the rental unit, and the Landlord would not accept the key for the rental unit, effectively ending the tenancy, from that third party.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy “if rent is unpaid on any day after the day it is due.” A landlord may issue a notice to end the tenancy effective “on a date that is not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the 10-Day Notice to the Tenant on October 4, 2023. The Tenant challenged the 10-Day Notice through a dispute resolution process; however, the Tenant did not attend the hearing and I dismissed the Tenant’s Application, as set out above.

I find the *Act* s. 26 applies, and the Tenant had no authorization to withhold payment of rent. Nor did they have authority from the tenancy agreement. I find the Tenant breached s. 26 of the *Act*. This continued into November 2023, with the Tenant effectively still occupying the rental unit.

Under s. 55 of the *Act*, a landlord may request an order of possession in this situation. Under s. 55(1) (*i.e.*, where I have dismissed the Tenant’s Application), I grant that order of possession effective two days after its service to the Tenant by the Landlord.

I grant the Landlord a Monetary Order for the amount of \$17,952, as per s. 55(4)(b) of the *Act*. This reflects the amount of rent that the Landlord presented in the hearing. I allow an amendment of the Landlord’s Application in the hearing, granted as per Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*.

As per s. 72(2) of the *Act*, I grant the Landlord to keep the entirety of the \$4,400 security deposit paid to them by the Tenant at the start of the tenancy. I grant a Monetary Order for the remaining amount, \$13,552, and add \$100 to that Monetary Order for the Landlord’s success on their Application.

Given that the tenancy is ending by reason of the 10-Day Notice, the validity of the Tenant’s notice to the Landlord is not at issue.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$13,652, pursuant to s. 55(4) of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 17, 2023

Residential Tenancy Branch