



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNR, LRE, OLC**

Landlord: **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

The landlords applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

The landlords were represented at the hearing by their agent/property managers C.F.C. and J.A. The landlord's agents were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Service of Notice of Dispute Resolution Hearing

The landlord's agents testified that they did not receive the tenant's Notice of Dispute Resolution package. The landlord's address for service on both the tenancy agreement and the notice to end tenancy is the office of the agent's property management company. The landlord found out about the tenant's application for dispute resolution in a text message conversation however the tenant never sent a copy of it to him or to his clients. Based on the undisputed testimony of the landlord's agent, I find the tenant's Notice of Dispute Resolution package was not served upon the landlord.

The landlords' agent J.A. testified that he served the tenant with his Notice of Dispute Resolution package via registered mail on December 14, 2023 and provided the tracking number for the mailing which is recorded on the cover page of this decision. The landlord's Notice of Dispute Resolution package is deemed served upon the tenant on December 19, 2023, the fifth day after it was mailed in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on December 1, 2023 with rent set at \$2,900.00 per month, payable on the first day of the month. A security deposit of \$1,450.00 was collected by the landlord on November 17th. The tenant failed to pay her first month's rent on December 1st and on December 4th, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting a copy of it to the tenant's door. The tenant did not pay the outstanding arrears of \$2,900.00 within 5 days of being served with the notice to end tenancy and the landlord was never served with an application to dispute the notice. The landlord testified that the tenant did not pay rent for the month of January and the landlord seeks to increase his application for compensation for January's rent.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30 a.m. and concluded at 9:45 a.m. As she did not attend, she did not present evidence regarding the merits of her application for me to consider. I dismiss the tenant's application seeking to dispute the landlord's notice to end tenancy and the tenant's application seeking an order to suspend the landlord's right to enter the rental unit without leave to reapply.

Section 26 of the *Act* states that 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. Based on the undisputed evidence of the landlord, I find the tenant was obligated to pay rent of \$2,900.00 on December 1, 2023, and failed to do so, contrary to section 26. I find the tenant did not have any right to deduct any portion of the rent. Given these findings, I uphold the landlord's 10 Day Notice to End Tenancy for Unpaid Rent that was served on the tenant on the fifth day after it was posted to her door, December 9, 2023.

Section 55(1) of the *Act* states that, if the landlord's notice to end tenancy complies with section 52 of the *Act*, the director must grant the landlord and Order of Possession if the landlord's notice to end tenancy is upheld during the dispute resolution proceedings. I have reviewed the landlord's notice to end tenancy and I find it complies with the form and content provisions as set out in section 52. Accordingly, the landlord is granted an Order of Possession.

As the effective date stated on the Notice has passed, I issue an Order of Possession effective 2 days after service upon the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

The landlord is entitled to compensation for unpaid rent in accordance with section 55(4) of the *Act*. I grant the landlord unpaid rent for the month of December, in the amount of \$2,900.00, plus pro-rated rent from January 1 to January 12th, the day of the dispute resolution hearing. [$\$2900.00 / 31 \times 12 = \$1,122.58$]

As the landlord was successful in the application, the landlord filing fee of \$100.00 shall be recovered.

In accordance with the offsetting provisions of section 72, the landlord may retain the tenant's entire security deposit in partial satisfaction of the monetary order.

Item	Amount
Rent for December 2023	\$2,900.00
Rent from January 1 to January 12, 2023	\$1,122.58

Filing fee	\$100.00
Less security deposit	(\$1,450.00)
Total	\$2,672.58

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I award the landlord a monetary order in the amount of **\$2,672.58**. The tenant must be served with this Order and the landlord may then file the Order for enforcement at Provincial Court of British Columbia (Small Claims Division).

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: January 12, 2024

Residential Tenancy Branch