



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding VABKOL INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on February 1, 2024. The Tenant applied to cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under sections 46 and 55 of the Act, an order requiring the Landlord to make repairs to the rental unit, an order for a rent reduction, an order requiring the Landlord to comply with the Act, regulation, or tenancy agreement under section 62 of the Act, and to recover their filing fee.

The Landlord’s Application for Dispute Resolution was made on February 7, 2024. The Landlord applied to enforce their 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under sections 46 and 55 of the Act, for a monetary order for unpaid rent and to recover their filing fee.

The Landlord and two of their Agents attended the hearing and were each affirmed to be truthful in their testimony. The Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

As the Tenant did not attend the hearing, service of the notice of hearing documents was considered. As the tenant is also an applicant to these proceedings, I find that they were notified by the Residential Tenancy Branch of the date and time of these proceedings. Additionally, the Landlord provided a signed witness statement to prove the service of their evidence and notice of hearing documents to the Tenant. Therefore, I find that the Tenant has been duly served with the notice of hearing documents in accordance with the act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Tenant’s Application Abandoned

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for fourteen minutes and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenant did not attend the hearing by 9:44 a.m. and the Landlord appeared and was ready to proceed, I find that the Tenant’s Application for Dispute Resolution has been abandoned and I dismiss the Tenant’s application without leave to reapply.

Issues to be Decided

- Is the Landlord entitled to an order of possession to enforce their notice to end tenancy
- Is the Landlord entitled to a monetary order for unpaid rent under the *Act*?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on August 1, 2023, and that rent in the amount of \$1,500.00 is to be paid by the first day of each month, and that the Landlord collected a \$750.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they had also issued a 10-day Notice to end the tenancy for Unpaid Rent (the "Notice") to the Tenant, by personal service on January 22, 2024. The Landlord submitted a copy of the Notice and a signed proof of service form into documentary evidence.

The Notice listed an effective date of February 2, 2024, and an outstanding rent amount of \$4,000.00.

The Landlord testified that the Tenant conducted a midnight move, from the rental unit last night, on February 29, 2024. The Landlord submitted that they are still seeking an order of possession for the rental unit.

The Landlord also testified that the Tenant had not paid the outstanding rent indicated on the January 22, 2024, notice, nor had they paid the rent for February 2024, the month the Tenant overhauled the rental unit after the effective date of their Notice. The Landlord testified that they are seeking a monetary order in the amount of \$5,500.00, consisting of \$1,00.00 in rent for November 2023, \$1,500.00 in rent for December 2023, \$1,500.00 in rent for January 2024, \$1,500.00 in rent for February 2024, for the outstanding rent for this tenancy.

The Landlord is requesting that an order of possession and a monetary order be issued for this tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I accept the undisputed testimony of the Landlord, and I find that the Tenant received the 10-Day notice on January 22, 2024, and that they had until January 27, 2024, to file to dispute the Notice. I have reviewed the Tenants application and noted that they filed to dispute the Notice on February 1, 2024, outside of the legislated time limit to file to dispute the Notice. Therefore, I find that the Tenant was conclusively presumed to have accepted the end of tenancy as indicated on the Notice.

I also accept the undisputed testimony of the Landlord that the Tenant has not paid the outstanding rent as stated on the 10-Day Notice as of the date of these proceedings, nor have they paid the rent for February 2024. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement.

However, as the Tenant has abandoned their application, I find that these points, noted above, are moot as the tenant's application has already been dismissed.

Section 55 of the *Act* states that a landlord may request an order of possession and a monetary order if a notice to end the tenancy for unpaid rent has been given by the landlord and the Tenant's application to dispute that notice is dismissed.

Order of possession for the landlord

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55(1) of the *Act*, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Additionally, as I have dismissed the Tenant's application, pursuant to section 55(1) of the *Act*, I must also grant the Landlords a monetary order for the outstanding rent due for this tenancy.

In this case, I accept the undisputed testimony of the Landlord that the rent has not been paid in the amount of \$5,5000.00 for this tenancy, for the months of November 2023, December 2023, January 2024, and February 2024. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement. Consequently, I find that the Landlord has established their entitlement to a monetary award for this unpaid rent for this tenancy, and I grant the Landlord permission to retain the security deposit they are holding for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

Therefore, I grant the Landlord a monetary order in the amount of \$4,850.00, comprised of \$1,00.00 in rent for November 2023, \$1,500.00 in rent for December 2023, \$1,500.00 in rent for January 2024, \$1,500.00 in rent for February 2024, and \$100.00 in the recovery of the Landlord's filing fee, less \$750.00 in the security deposit that the Landlord is holding for this tenancy.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. 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 find for the Landlord under sections 26, 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$4,850.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. 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: March 1, 2024

Residential Tenancy Branch