



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On May 9, 2024, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking more time to cancel the Notice pursuant to Section 66 of the *Act*.

On May 13, 2024, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant did not attend the hearing at any point during the 13-minute hearing. J.T. attended the hearing as an agent for the Landlord. At the outset of the hearing, I informed J.T. that recording of the hearing was prohibited, and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

As the Tenant did not attend the hearing, I dismiss his Application without leave to reapply.

J.T. advised that the Tenant was served the Notice of Hearing and evidence package by email, as per the signed consent form, on May 14, 2024, and evidence was submitted to corroborate service. Based on the consistent and undisputed evidence before me, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served the Notice of Hearing and evidence package. As such, I have accepted this evidence, and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.T. advised that the tenancy started on September 1, 2023, that the rent was established at an amount of \$2,500.00 per month, and that it was due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He then testified that the Notice was served to the Tenant by email on May 2, 2024. The Notice indicated that \$2,500.00 was owing for rent and that it was due on May 1, 2024. The effective end date of the tenancy was noted as May 16, 2024.

He submitted that the Tenant did not pay any rent for May 2024, thus the Notice was served. He indicated that the Tenant did not have any authority under the Act to withhold any rent. He confirmed that the Tenant did not pay any monies after service of the Notice. As such, the Landlord is seeking a Monetary Order in the amount as follows:

- May 2024 rent: \$2,500.00
- June 2024 rent: \$2,500.00
- Total rental arrears: **\$5,000.00**

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant acknowledged on their Application that the Notice was received on May 2, 2024. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on May 2, 2024, they must have paid the rent in full or disputed the Notice by May 7, 2024, at the latest. While the Tenant did dispute the Notice, they did so late, and they did not attend the hearing. As such, this Application was dismissed without leave to reapply. Furthermore, there is no evidence before me that the Tenant had any authorization under the *Act* to withhold the rent, nor is there any evidence that the Tenant paid the rent in full to cancel the Notice. As the Tenant did not have any authorization to withhold any rent under the *Act*, I find that the Tenant

breached the Act and jeopardized their tenancy.

With respect to the issue of the unpaid rent, there is no dispute that the Tenant did not pay any rent for May or June 2024. As I have determined above that the Tenant has breached the Act, I find that the Landlord is entitled to a Monetary Order for unpaid rent in the amount of **\$5,000.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this debt outstanding.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for May 2024	\$2,500.00
Rental arrears for June 2024	\$2,500.00
Filing Fee	\$100.00
Security deposit	-\$1,250.00
Total Monetary Award	\$3,850.00

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord **effective seven (7) days after service of this Order on the Tenant(s)**. Should the Tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$3,850.00** 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: June 6, 2024

Residential Tenancy Branch