



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: OPR
Tenant: CNC-MT

Introduction

This hearing was convened as a cross-Application for Dispute Resolution. A participatory hearing was held on October 22, 2024. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other’s Notice of Dispute Resolution Proceeding packages, which I find were sufficiently served. The Tenant confirmed receipt of the Landlord’s evidence package, which I find was sufficiently served. The Tenants failed to upload their evidence to the RTB for this dispute. As such, I find it is not admissible and will not be considered.

The landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities or for the 1 month notice for cause?
2. Are the Tenants entitled to have the 1 month notice cancelled?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The landlord testified that current rent is \$1,480.71, and it due on the first of the month, as it was increased lawfully, in accordance with their previous application for an additional rent increase. This increase came into effect as of September 1, 2024. The Tenants did not dispute that this is the current rent or that it is due on the 1st of the month.

The Landlord served, and the Tenants received, the 10 Day Notice to End Tenancy for Unpaid Rent on September 2, 2024. The Landlord issued this notice because the Tenants failed to pay September rent in full and on time. The Landlord provided a schedule of payments made by the Tenants, which shows that rent for September was paid in two installments. The first payment was made on September 1, 2024, in the amount of \$1,282.00. Then, the Landlord stated the next payment wasn't made until September 14, 2024, in the amount of \$198.71.

The Tenants stated that they paid rent, in full, by September 12, 2024, not the 14th as asserted by the Landlord.

No rent is currently owing at this time.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant had a balance of unpaid rent in the amount of \$198.71 at the time the 10 Day Notice was issued on September 2, 2024. The Tenants acknowledged receipt of the notice this same day.

The tenants had 5 days to pay rent in full or file an application for dispute resolution to dispute the 10 Day Notice, following receipt of the Notice on September 2, 2024. Although the Tenants filed to dispute a 1 month notice, they did not file to dispute the 10 day notice. Further, they did not pay their outstanding rent until at least September 12, 2024, which is 5 days beyond the allowable time frame. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The landlord is entitled to an order of possession, which will be effective 7 days after it is served on the tenant.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Pursuant to sections 72 of the *Act*, I authorize the landlord to retain \$100.00 from the security deposit in order to compensate him for the cost of filing this application.

Given my findings thus far, it is not necessary to consider the remainder of the application.

Conclusion

The landlord is granted an order of possession effective **7 days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: October 22, 2024

Residential Tenancy Branch