



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARSUM HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	For the landlord:	OPRM-DR, FFL
	For the tenant:	MT, CNR, LRE

Introduction

This decision is in respect of the tenant's and landlord's applications for dispute resolution under the *Residential Tenancy Act* (the "Act").

The landlord's application, made on October 12, 2018, sought the following remedies under the Act: (1) an order of possession of the rental unit for unpaid rent; (2) a monetary order for unpaid rent; and, (3) a monetary order for recovery of the filing fee.

The tenant's application, made on October 11, 2018, sought the following remedies under the Act: (1) an extension of time in which to dispute a notice to end tenancy after the time to dispute the notice has expired; (2) an order to suspend or restrict the landlord's right to enter the rental unit; and, (3) a monetary order for recovery of the filing fee.

The landlord's agent and a witness for the landlord (the landlord's building manager) attended the dispute resolution hearing, which was convened on November 22, 2018 at 11:00 A.M. The tenant attended the hearing after approximately five to six minutes, and after the landlord's agent and witnesses and provided testimony regarding their application. The tenant explained that he was late because he had thought the hearing was in-person.

Neither party raised any issue in respect of service of documents. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to more time in which to dispute the notice to end the tenancy, beyond the time permitted under the Act?
2. If yes, is the tenant entitled to an order cancelling the notice to end the tenancy?
3. If yes, is the tenant entitled to a monetary order for recovery of the filing fee?
4. Is the landlord entitled to an order of possession of the rental unit?
5. Is the landlord entitled to a monetary order for unpaid rent?
6. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord's agent testified that the tenancy commenced on July 1, 2016. Monthly rent was initially \$980.00, due on the first of the month. Rent was later increased to the present amount of \$1,056.00. The tenant paid a security deposit of \$490.00. There is no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

On October 2, 2018, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), which was served on the tenant by the landlord's building manager, who testified and confirmed the date and method of service. The Notice was served by being attached to the tenant's door. The Notice indicated that the end of tenancy date was (incorrectly) October 11, 2018. A copy of the Notice and a Proof of Service document were submitted into evidence by the landlord.

In respect of what the tenant owes, the landlord's agent testified that the tenant has not paid for October 2018 and has not paid rent for November 2018, and therefore currently owes \$2,112.00 in unpaid rent, plus \$60.00 for two months' worth of parking fees, for a total amount of \$2,172.00.

After the landlord's agent and witness provided their testimony and presented evidence, the tenant dialled into the hearing. I briefly summarized what the landlord was seeking in its claim.

The tenant testified that he is in the film industry, and that it is currently a slow time. He commented that "it's not like I don't wanna pay rent," but simply that times are difficult. When he is busy, he earns a good living, but when times are slow, he does not. He further noted that he has always paid his rent on time and has never had any difficulty until now; the landlord's agent responded by explaining that the tenant has a history of late payment. (I advised the parties that whether the tenant was previously late paying rent prior to these applications is not an issue that I would review or assess.)

Finally, the tenant testified that he is "a good guy," and that he is a stand-up comedian, and that even the landlord's building manager would attest to this. He ended his

testimony by submitting that I consider hardship as the reason for his being unable to pay rent and noted that he could give the landlord some money toward early next week, on or around November 26, 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I turn first to the tenant's application in respect of his request to extend the time in which to dispute the Notice. The Notice was served on October 2, 2018 by being posted on the tenant's door. Pursuant to section 90(c) of the Act, the tenant is deemed to have received the Notice on the third day after the landlord attached the Notice to the door, that is, October 5, 2018. The Notice and the Act gives the tenant 5 days to dispute the Notice, that is, until October 10, 2018. The tenant did not apply for dispute until October 11, 2018. (I note that the effective end of tenancy date should have read October 15, 2018, not October 11, 2018.)

Section 66(1) of the Act states that an arbitrator "may extend a time limit established by this Act only in exceptional circumstances." Unfortunately, the tenant provided no explanation during his testimony about why the time in which to dispute the Notice should be extended. In the particulars of his application he wrote "I simply thought I can come up with cash before the dead line."

Based on the briefest of explanations in the tenant's application, I do not find that there is an exceptional circumstance by which I may extend the time limit in which to extend the time limit in which he had the opportunity to file for dispute resolution. As such, I dismiss this aspect of the tenant's claim.

The tenant did not submit any documentary evidence or provide any testimony in respect of his application for an order suspending or restricting the landlord's right to enter the rental unit. As such, I dismiss this aspect of the tenant's claim.

Finally, I dismiss the tenant's claim for a monetary order for recovery of the filing fee.

Turning now to the landlord's application, section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord comply with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support its submissions, that the tenant did not pay rent, and some minor parking fees, for the months of October and November 2018; the tenant did not dispute that he has not paid rent for these months. There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenant applied to cancel the Notice within the time permitted.

While I appreciate and acknowledge that the tenant may be experiencing difficult times in the stand-up comedy and film industries, hardship is not a legal defense or a permitted exception under the Act to not pay rent.

Taking into careful consideration the documentary evidence and oral testimony of the parties, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving its claim that the tenant owes \$2,172.00 in rent and parking fees, and so grant an award in that amount

I hereby order that the landlord retain the security deposit in the amount of \$490.00 in partial satisfaction of the award.

As the landlord is successful in its claim, I grant the landlord a monetary award in the amount of \$100.00 for recovery of the filing fee.

A total monetary order of \$1,782.00 for the landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent and parking fees	\$2,172.00
Filing fee	100.00
LESS security deposit	(\$490.00)
TOTAL:	\$1,782.00

Regarding the order of possession sought by the landlord, section 55 of the Act states that a landlord may request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

In this case, the landlord applied for dispute resolution seeking an order of possession, the landlord issued a notice to end the tenancy, the tenant did not dispute the Notice, and the time for making that application had expired. Therefore, I grant the landlord an order of possession.

Conclusion

I hereby dismiss the tenant's application in its entirety without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$1,782.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 22, 2018

Residential Tenancy Branch