



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, CNR, FFT

Introduction

This hearing was convened as a result of the Tenant's two applications for Dispute Resolution under the *Residential Tenancy Act* ("Act"). The Tenant's first application is for an Order cancelling a Four Month Notice to End the Tenancy for Demolition, dated April 28, 2021 ("Four Month Notice"). The Tenant's second application was for an Order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent dated June 4, 2021 ("10 Day Notice"), and to recover the \$100.00 cost of her Application filing fee.

The hearing was originally scheduled for September 30, 2021; however, as that day was declared a federal statutory holiday, the hearing had to be rescheduled to October 1, 2021. However, the Parties were given Notices of Hearing with different call-in numbers for the September 30 and the October 1, 2021 hearings. Unfortunately, the Tenant used the call-in numbers for the September 30, 2021 hearing, and therefore, she missed the rescheduled hearing on October 1, 2021. A decision was made for the Landlord's benefit in the absence of the Tenant.

The Tenant applied to have the original decision reviewed, because of the reason she had missed the October 1, 2021 hearing. A reviewing arbitrator approved the Tenant's review application, and as a result, a new hearing was rescheduled to November 1, 2021.

The Tenant and the Landlord appeared at the November 1, 2021 teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided her email address in her Application and confirmed it in the hearing, and the Landlord provided his email address in the hearing. The Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Should the Four Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent, and if so, in what amount?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties confirmed that the periodic tenancy began on November 1, 2017, with a monthly rent of \$1,250.00, due on the first day of each month. However, the Tenant said that she only agreed to pay \$1,000.00 a month for rent, and that a few months later, the Landlord told her that the rent was going up to \$1,250.00. The Tenant said that she paid the Landlord a security deposit of \$500.00, and no pet damage deposit.

In contrast, The Landlord said that he told the Tenant that the rent was \$1,250.00, and he said she paid that and a \$625.00 security deposit. The Landlord said that the Tenant told him to say the rent was \$1,000.00 on the Ministry support application form, otherwise, the Ministry will not pay her rent.

However, the Tenant did not explain why the Ministry would pay her full \$1,000.00 rent, leaving her with nothing to pay, if this is the rent on which the Parties had agreed.

Further, the Parties agreed that the Tenant paid the Landlord the extra \$250.00 for most of the tenancy, despite the Tenant's allegation that the Landlord gave her an illegal rent increase, which led to this amount.

I note that the Tenant did not apply to have the rent increase cancelled at any point in the four-year tenancy. The above noted evidence raises questions in my mind about the Tenant's version of events of how much rent she is required to pay for the tenancy. I find on a balance of probabilities that it is more likely than not that the Tenant's rent is \$1,250.00, and that she paid the Landlord a security deposit of \$625.00. However, the Landlord said that the security deposit is gone, because the Tenant used it to pay rent at some point in the tenancy.

The evidence before me is that the Tenant applied and paid for dispute resolution to dispute the 10 Day Notice on June 10, 2021. The Parties agreed that the 10 Day Notice was signed and dated June 4, 2021, that it has the rental unit address and was served in person on June 4, 2021. The 10 Day Notice has an effective vacancy date of June 15, 2021, and that it was served on the ground that the Tenant failed to pay \$400.00 of rent owing and due on June 1, 2021.

The following table includes the amounts that the Landlord said the Tenant had paid in rent, along with the amount that remains owing. The Tenant did not dispute these figures.

Date Rent Due	Amount Owing	Amount Received	Arrears Owing
May 1, 2021	\$1,250.00	\$1,050.00	\$200.00
June 1, 2021	\$1,250.00	\$1,050.00	\$200.00
July 1, 2021	\$1,250.00	\$1,050.00	\$200.00
August. 1, 2021	\$1,250.00	\$1,050.00	\$200.00
September 1, 2021	\$1,250.00	\$1,000.00	\$250.00
October 1, 2021	\$1,250.00	\$1,000.00	\$250.00
			\$1,300.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The Tenant did not provide any evidence that she had a decision of the Director authorizing her to deduct a portion of her rent.

Further, section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a 10 Day Notice to pay the overdue rent or dispute the notice by applying for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant received the 10 Day Notice on June 4, 2021. Accordingly, and pursuant to section 46 (4) of the Act, the Tenant had until June 9, 2021, to dispute the 10 Day Notice by applying for dispute resolution or paying the outstanding rent in full.

I find that the Tenant has not paid her overdue rent, and that rent arrears in the amount

of \$1,300.00 remains outstanding. Further, I find that the Tenant's \$625.00 security deposit is no longer held in trust by the Landlord, as it has been applied to rent arrears at some point in the tenancy. As such, I will not order the Landlord to retain the security deposit in partial satisfaction of the monetary award.

Accordingly, I find the Landlord has demonstrated an entitlement to a monetary award of \$1,300.00 for unpaid rent. I, therefore, award the Landlord with a **Monetary Order** for **\$1,300.00** from the Tenant, pursuant to sections 26 and 67 of the Act.

As rent has not been paid when due, I find further that the Landlord is entitled to an order of possession. I, therefore, grant the Landlord an **Order of Possession** of the rental unit, and since the effective vacancy date on the 10 Day Notice has passed, the Order of Possession will be **effective two days after it is deemed served** on the Tenant, pursuant to section 55 of the Act.

Having made these Orders, I find I do not need to consider the validity of the Four Month Notice. Rather, the Tenant's application to cancel the Four Month Notice is dismissed without leave to reapply. Both of the Tenant's applications are dismissed wholly without leave to reapply.

Conclusion

The Tenant is unsuccessful in her Application to cancel the 10 Day Notice, as she applied for dispute resolution late and, therefore, she is conclusively presumed by section 46 (5) of the Act to have accepted that the tenancy ends on the effective date of the 10 Day Notice. The Tenant's applications are dismissed wholly, without leave to reapply.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order of **\$1,300.00**.

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 final and binding on the Parties, unless otherwise provided under the Act, and 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: November 01, 2021

Residential Tenancy Branch