



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord's application: OPR, MNRL-S, MNDCL, FFL
Tenant's application: CNR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear cross applications.

The tenant's application pursuant to the Act is for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;

The landlord's application pursuant to the Act is for:

- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to sections 46 and 55;
- A monetary order for unpaid rent, pursuant to section 26;
- A monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67 and;
- An authorization to recover the filing fee for this application, under section 72

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and the Evidence

I find that the tenant is deemed served with the Proceeding Package by registered mail, in accordance with the Act. The landlord provided the Canada Post registered mail tracking number to confirm service.

Based on the submissions before me, I find that the landlord's evidence was served to the tenant in accordance with section 88 of the Act.

The landlords acknowledged service of the tenant's Proceeding Package and are duly served in accordance with the Act.

The tenant did not submit any evidence.

Issues 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 unpaid rent?

Is the landlord entitled to a Monetary Order for damage or loss under the Act, regulation, or tenancy agreement?

Is the landlord entitled to recover their filing fee?

Preliminary Matters

Should the hearing proceed without the tenant?

The landlords and I were in the teleconference for a total of 58 minutes, until 10:28 AM. I checked the internal case management system the day of the hearing and on the morning of October 6, 2023, for any record of contact from tenant. Rule of Procedure

7.8 requires the tenant to have a representative attend the hearing and ask for an adjournment if they require one.

The landlords were ready to proceed. In the absence of any contact from the tenant to request an adjournment, I proceeded with the hearing as permitted by Rule 7.3.

Background and Evidence

Based on the undisputed testimony of the landlords and their submitted evidence, the tenancy started on December 10, 2021, with a monthly rent of \$1,995.00 due on the first day of each month. A security deposit in the amount of \$997.50 was paid to the landlords on December 7, 2021. The landlords submitted evidence showing that the monthly rent was increased to \$2,035.00 on January 1, 2022.

Unpaid Rent

The landlords stated that there was a mutual agreement to end tenancy effective August 31, 2023, at 1:00 PM, and submitted an #RTB-8 Mutual Agreement to End a Tenancy form which was signed by the tenant on June 11, 2023, as evidence.

When August arrived, the landlords allege that the tenant did not pay rent. The landlords subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The 10 Day Notice was signed by the landlords on August 14, 2023, posted to the tenant's door on the same day, and listed \$2,035.00 in unpaid rent that was due on August 1, 2023. The move out date on the 10 Day Notice was August 25, 2023.

The landlords submitted bank records detailing a recent history of e-transfers dating from September 5, 2023, back to January 1, 2023, which shows rent payments being received from a different alias than the tenant. The landlords stated that this was the norm from the start of the tenancy. The bank statement shows that the last rent payment received by e-transfer was for the month of July 2023. The landlords affirmed that, as of the date of the hearing, they had not received rent for August, September, and October 2023.

The tenant's application asserts that the rent has been paid, however, there was no evidence or details provided to substantiate this claim.

Landlords' monetary losses due to tenant's lack of communication and cooperation

The landlords assert that the tenant stopped regularly communicating with them in early August. At this time, the landlords were still under the impression that the tenant was going to vacate on August 31, 2023. Thus, the landlords procured inspection services from a property management company to conduct inspections on August 31, 2023, to a) verify that the unit is vacated and b) conduct the move-out inspection. The landlords reported that the tenant never replied to their repeated requests to arrange a move-out inspection, therefore they scheduled it for August 31, 2023, which was the move-out date that was agreed upon in the mutual agreement to end tenancy.

As the landlords live physically distant from the rental unit, requiring a ferry ride to arrive in the city of the rental unit, hiring a property management company to act on their behalf was the most cost-effective solution. Given that the tenant had not vacated on August 31, 2023, these costs went to waste – the landlords will have to hire another third party to conduct the move-out inspection in the future.

The landlords' application included a claim for \$300.00 in loss caused by the tenant related to the inspections. The landlords submitted an invoice from their property management company, which was dated August 10, 2023, and showed \$100.00 for an inspection to see if the tenant was still in the rental unit, as well as \$200.00 for a move-out inspection scheduled for August 31, 2023.

The landlords state that these costs were avoidable had the tenant communicated better.

Analysis

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I note that the 10 Day Notice was served by being posted to the tenant's rental unit door on August 14, 2023 – it would be deemed received by August 17, 2023, in absence of

acknowledgement of receipt by the tenant on an earlier date. As prescribed under section 53 of the Act, the effective move out date of the 10 Day Notice is automatically changed to August 27, 2023, and the tenant had until August 22, 2023, to pay the rental arrears.

The tenant's application asserting that the rent has been paid is unsubstantiated by any testimony or evidence. On a balance of probabilities, I find that it is more likely that the rent has not been paid.

Therefore, I find that the landlords had cause to issue the 10 Day Notice, and that the tenant was duly served with the 10 Day Notice in accordance with the Act. I find that the tenant has not paid the rental arrears within five days of receiving the 10 Day Notice.

For the above reasons, the tenant's application for cancellation of the landlord's 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply. The landlord is entitled to an Order of Possession.

Is the landlord entitled to a Monetary Order for unpaid rent?

The landlord has provided evidence and convincing testimony indicating that rent has not been paid for the months of August and September 2023. The landlord's claim is seeking \$4,070.00 in unpaid rent, which represents the two months of missing rent. As I have found that the 10 Day Notice is valid and compliant with section 52 of the Act, I find the landlord is entitled to a Monetary order of \$4,070.00 in unpaid rent.

Is the landlord entitled to a Monetary Order for damage or loss under the Act, regulation, or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlords paid and scheduled the inspections on August 10, 2023, which was prior to the issuing of the 10 Day Notice and before either party had filed any disputes with the Residential Tenancy Branch (RTB). I find it reasonable for the landlords to have believed, at the time, that the tenant was still going to honour the mutual agreement to end tenancy on August 31, 2023.

Under normal circumstances, costs related to inspections are the burden of the landlord. In this situation, the landlord is asserting that the failure of the tenant to communicate that they were no longer vacating on August 31, 2023, resulted in the landlord paying for an inspection that was no longer necessary.

However, I find that the landlords received their Proceeding Package on August 23, 2023, which included their application for an Order of Possession. On this date, the landlord would have learned that the hearing is scheduled for October 5, 2023, and I find it reasonable to conclude that the landlords knew that the likelihood of having the rental unit vacant by August 31, 2023, was low. This was more than a week before the inspections were scheduled to take place – the landlords could have mitigated their losses by cancelling the inspections and seeking a full or partial refund.

For the above reasons, the landlords' application for a Monetary Order for compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the landlord entitled to recover their filing fee?

The landlords are successful in most of their claims in their application. Therefore, the landlord is entitled to a monetary order to recover their filing fee pursuant to section 72(2)(a).

Conclusion

The landlords are provided with the following orders which must be served to the tenant by the landlords:

An Order of Possession to the landlords **effective two (2) days after service** of this Order on the tenant.

Should the tenant 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.

I authorize the landlords to retain the security deposit, plus interest, to offset the Monetary Order. Accordingly, I grant the landlords Monetary Order in the amount of **\$3,157.69** under the following terms:

Monetary Issues	Granted Amount
A Monetary Order for unpaid rent (August and September 2023) under section 55 of the Act	\$4,070.00
Minus security deposit	-\$997.50
Minus interest on the deposit from December 7, 2021, to October 5, 2023	-\$14.81
Recovery of the filing fee for the landlord	\$100.00
Total Amount	\$3,157.69

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: October 05, 2023

Residential Tenancy Branch