



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

On May 9, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I find that landlords have not provided the last page of the residential tenancy agreement where the signatures of the landlords and the tenant should appear. As a signed tenancy agreement is a requirement of the direct request process, I find that a participatory hearing is necessary in order to protect the procedural rights of the tenant.

The residential tenancy agreement submitted by the landlords has no date indicating the day in the month on which the rent is due, which is necessary in order to determine the validity of the 10 Day Notice.

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord LW testified that he personally served the tenant with the dispute resolution hearing package, which includes the adjudicator's interim order, at

approximately 9:00 a.m. on May 10, 2019. This was witnessed by the other landlord, DL.

I am satisfied the tenant was duly served in accordance with the adjudicator's order which states: **The applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.**

Preliminary Issue

Since issuing the 10 Day Notice, arrears in rent for the month of June has accrued. The landlord sought to amend the application for a monetary order to include June rent and I allowed this amendment in accordance with section 63(3)(c) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid rent?
Can the landlord recover the filing fee?

Background and Evidence

The landlords submitted the following evidentiary material:

- A complete copy of a residential tenancy agreement indicating a monthly rent of \$2,500.00 for a tenancy commencing on February 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 2, 2019, for \$3,250.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 7:30 pm on May 2, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

The landlords provided the following undisputed testimony. The tenancy agreement provided to me was the one signed by all 4 parties on January 6, 2019. Rent in the amount of \$2,500.00 is due on the 1st day of each month.

The tenant started paying rent late in April 2019. The following is a table of payments the landlord testified as owing by the tenant:

Month rent due	Amount owing	Partial payment	Date of partial payment	Balance rent owed
April 1, 2019	\$2,500.00	\$500.00	April 8, 2019	\$2,000.00
		\$750.00	April 10, 2019	\$1,250.00
		\$500.00	April 24, 2019	\$750.00
May 1, 2019	\$2,500.00	0	0	\$3,250.00
June 1, 2019	\$2,500.00	0	0	\$5,750.00

The landlord testified he served the tenant with the aforementioned 10 Day Notice on May 2, 2019 as evidenced by the proof of service document he filed. The landlord testified the tenant has not paid the outstanding rent or served him with a Notice of Dispute Resolution Proceedings to dispute the 10 Day Notice.

Analysis

- Order of Possession

I am satisfied the deficiencies identified by the adjudicator in the interim decision have been addressed. A complete copy of the tenancy agreement signed on January 6, 2019 was provided which also clearly indicates rent is due on the first day of the month.

I am satisfied the tenant was duly served with the 10 Day Notice on May 2, 2019 in accordance with section 88 of the Act. I am satisfied the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

Sections 46(4) and (5) of the Act state:

(4) Within 5 days after receiving a notice under this section, the tenant may

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

(5) 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.

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenant is conclusively presumed to have accepted the tenancy

ended on May 12, 2019, the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the *Act*.

- Monetary Order for Rent

The landlord has provided undisputed evidence the tenant is in arrears of rent totalling \$5,750.00. Section 26 of the *Act* is clear, A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I award the landlord monetary compensation in the amount of \$5,750.00.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for this application.

Conclusion

I find the landlord is entitled to an Order of Possession, effective **two days after service 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,850.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) 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: June 21, 2019

Residential Tenancy Branch