



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNRL OPL OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by their advocate.

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant said they had not served any materials on the landlord. Based on the testimonies I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Adjournment Request

At the outset of the hearing the tenant requested the hearing be adjourned. The tenant testified that their family member who has assisted them with their tenancy is travelling at this time and unavailable. The tenant said that the family member was on an annual trip out of reach of telecommunication. The tenant was unaware of the duration of the family member's unavailability but estimated that they would be able to participate in a hearing in about two weeks' time. The tenant's advocate said that the tenant is incapable of representing themselves, that they do not have the full particulars of the matter, and echoed the request for an adjournment.

The landlord did not consent to the hearing being adjourned and rescheduled.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the tenant has provided little evidence in support of their request for an adjournment. The tenant's submission consists of testimony that their family member was travelling on a pre-planned annual trip and was unaware of precisely when they would be available. The tenant provided no documentary evidence of the family member's schedule or why they were unable to request an adjournment prior to the hearing.

The tenant's advocate submitted that the tenant is incapable of representing themselves. However, no documentary evidence was provided outlining the tenant's lack of capacity or need for a family member to assist. The tenant was able to respond to direct questions and understood the subject matter and nature of the hearing.

Under the circumstances I find that the tenant has not met the criteria established for granting an adjournment. The onus is on the applicant to prove their claim on a balance of probabilities. The tenant provided little information and details as to the circumstances leading to this adjournment request. If, as the tenant submits, the family member's trip was planned in advance, I find there is no reason why a request for an adjournment could not have been made prior to the hearing. Furthermore, it would be reasonable for the tenant to provide some documentary evidence in support of their application for an adjournment.

I find that the tenant and their family member were aware of the scheduling conflict in advance and could have made other arrangements. The tenant could have applied prior to the hearing for an adjournment or submitted documentary evidence in support of their application, but the tenant failed to do so. I find that the need for an adjournment arises from the tenant's failure to take reasonable steps. I find that the tenant has provided insufficient submissions to show that an adjournment is required and that their request and possible prejudice arises as the direct result of the tenant's failure to act reasonably in the circumstances.

I further find that the tenant attended the hearing with their advocate, was aware of the nature of the hearing and was able to cogently speak on their own behalf. I find that the tenant was provided a fair opportunity to be heard, and find little prejudice to the tenant to proceed with the hearing as scheduled.

As such, the tenant has not met the criteria established for granting an adjournment and the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Award as claimed?

Background and Evidence

This periodic tenancy began in 2013. The monthly rent at the start of the tenancy was \$650.00 and subsequently raised by agreement of the parties to \$720.00. The current monthly rent is \$738.00 payable on the first of each month.

The landlord submits that the tenant has consistently failed to pay the full amount of the monthly rent and there was a rental arrear of \$1,190.00 as at May 5, 2019, when a 10 Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the 10 Day Notice was served on the tenant by registered mail and provided a scan of the Canada Post tracking receipt into evidence. The tenant confirmed receipt of the 10 Day Notice.

The parties agree that the tenant did not file an application to dispute the 10 Day Notice nor did they make full payment of the arrears within 5 days of receiving the notice.

The landlord submits that as of the date of the hearing the rental arrear is \$1,260.00. The landlord submitted into documentary evidence a tenant ledger showing the amounts owing and paid. The landlord testified that any payment made by the tenant has been for use and occupancy only and have not reinstated the tenancy.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a valid 10 Day Notice.

I accept the evidence of the parties that the tenant was served with the 10 Day Notice of May 5, 2019.

I find that the tenant was obligated to pay the monthly rent in the amount of \$738.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, May 15, 2019. Therefore, I find that the landlord is entitled to an Order of Possession,

pursuant to section 55 of the *Act*. As the effective date of the Notice has passed I issue an Order of Possession effective 2 days after service.

I accept the landlord's evidence that there is a rental arrear of \$1,260.00 as at the date of the hearing. In accordance with section 67 of the *Act* which grants me the authority to issue an order for compensation for damages and loss arising from a breach of the *Act*, regulations or tenancy agreement, I issue a monetary award in that amount in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service 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 issue a monetary order in the landlord's favour in the amount of \$1,260.00. 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 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: August 12, 2019

Residential Tenancy Branch