



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Happiness Town Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, OPR-DR, OPRM-DR (landlord); OLC, CNR (tenant)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten Day Notice") pursuant to section 46;
- An order requiring the landlord to comply with the *Act* pursuant to section 62.

I conducted this hearing by teleconference. The landlord's agent and lawyer RV appeared for the landlord ("the landlord").

The landlord provided affirmed testimony. The landlord made submissions as well as presented oral and written evidence.

The tenants did not attend the hearing (“the tenant”). I kept the teleconference line open from the time the hearing was scheduled for forty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the landlord served each tenant with the Application for Dispute Resolution and supporting documents pursuant to section 89 of the *Act* by registered mail sent on March 23, 2020. The landlord provided the Canada Post tracking numbers for the registered mail referenced on the first page of this decision. Pursuant to sections 89 and 90, I find the landlord served the tenant on March 28, 2020, the 5th day after mailing.

Preliminary Issue: Tenants’ Application

The landlord testified that the landlord was not served with the tenant’s Notice of Hearing or Application for Dispute Resolution; the landlord learned of the application through an automatically generated RTB notice.

Preliminary Issue - Amendments

At the outset, the landlord requested the following:

- Amendment of the application to include rent for March and April 2020 in the amount of \$1,200.00 each for a total monetary award requested of \$7,200.00;
- Authorization to apply the security deposit of \$600.00 to the monetary award; and
- An amendment to the Application to request an Early Termination of Tenancy pursuant to section 56.

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Nonpayment of Rent (“the Ten-Day Notice”) dated February 24, 2020 which included a claim for nonpayment of rent up to and including that date in the amount of \$4,800.00; the landlord provided affirmed testimony and proof of service of the Ten-Day Notice on the tenant took place by mailing by registered mail on February 24, 2020, thereby effecting service on February 29, 2020. The landlord submitted the tracking number which appears on the first page. The landlord also provided uncontracted affirmed testimony that the tenant had not paid any rent since that time and rent for the months of March and April 2020 had subsequently accrued.

The landlord submitted testimony that the tenant paid a security deposit of \$600.00 at the beginning of the tenancy which the landlord holds. The tenant has not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The landlord stated that the landlord had recently learned of illegal activities in the unit which took place in June 2019 and resulted in criminal charges against the tenants.

Rule 4 of the Rules of Procedure allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent which accrued following the service of the Ten-Day Notice as well as authorization to apply the security deposit the landlord holds to the monetary award. I accordingly allow the landlord to amend the application as sought with respect to the first two applications.

However, I do not allow the landlord authorization to add a new claim under another section of the Act without notifying the tenant of the landlord's intention to do so. I find that the considerations of Rule 4 are not met by the landlord in the landlord's application in this regard.

I authorize the landlord to bring an application for Early Termination of Tenancy pursuant to section 56.

The landlord clarified the landlord's claim as follows:

ITEM	AMOUNT
Rent	\$ 7,200.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$ 600.00)
Total Monetary Award Requested	\$6,700.00

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 46 and 55 of the Act?

Is the landlord entitled to a monetary order pursuant to section 67 of the Act?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the Act?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the Act?

Is the tenant entitled to cancel the Ten-Day Notice and for an order that the landlord comply with the Act and the Agreement?

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord testified that the parties entered into a signed residential tenancy agreement commencing March 1, 2019. Rent is currently \$1,200.00 a month payable on the first of the month. The landlord submitted a copy of the agreement signed by both parties.

The landlord testified the tenant paid a security deposit at the start of the tenancy of \$600.00 which is held by the landlord. The tenant has not provided any written authorization to the landlord to retain the deposit.

The landlord issued the Ten-Day Notice which the landlord testified was served by registered mail sent on February 24, 2020, thereby effecting service on February 29, 2020.

The landlord filed a signed and witnessed Proof of Service of Notice to End Tenancy form.

The landlord submitted a copy of the Ten-Day Notice with an effective vacancy date of March 6, 2020 (corrected to March 10, 2020) as evidence. The Notice requires the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days.

The landlord testified the tenant did not pay the rent owing or file an Application for Dispute resolution within five days; the tenant filed an Application to cancel the Notice on March 11, 2020.

The tenant has made no subsequent payments and continued to reside in the rental unit.

The landlord submitted the following in support of the claim for outstanding rent: a monetary worksheet: a Direct Request Worksheet.

The landlord provided uncontradicted testimony that rent is owing in the amount of \$7,200.00.

The landlord requested a monetary order for outstanding rent of \$7,200.00, reimbursement of the filing fee of \$100.00 and authorization to apply the security deposit to the monetary award for a total award requested of **\$6,700.00**.

The landlord requested an order of possession effective two days after service.

A summary of the landlord's claim follows:

ITEM	AMOUNT
Rent	\$ 7,200.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$ 600.00)
Total Monetary Award Requested	\$6,700.00

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

I have reviewed all documentary evidence and testimony.

Tenant's Application

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the tenant did not attend the hearing or serve the landlord, in the absence of any evidence or submissions, I order the tenant's application dismissed without leave to reapply.

Landlord's Application

I find the form and content of the Ten-Day Notice complies with section 52 of the Act.

I find the tenant was served with the Ten-Day Notice on February 29, 2020 in accordance with sections 88 and 90 of the Act.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of March 10, 2020 requiring the tenant to vacate the rental unit by that date.

As the tenant continued to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of \$7,200.00 for unpaid rent. I award the landlord reimbursement of the \$100.00 filing fee.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the security deposit of \$600.00 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Rent	\$ 7,200.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$600.00)
Total Monetary Award	\$6,700.00

Conclusions

I grant a monetary order to the landlord in the amount of **\$6,700.00**.

This order must be served on the tenant. 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.

I also grant the landlord an order of possession effective two days after service on the tenant.

This order must be served 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 to be enforced as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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: April 24, 2020

Residential Tenancy Branch