



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, CNR, CNL (tenant);**
 OPU, MNRL, MNDCL, OPC, FFL (landlord)

Introduction

This hearing 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;
- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;

This hearing also 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") and utilities pursuant to sections 46 and 55;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;

- Authorization to recover the filing fee for this application pursuant to section 72.

This matter was set for hearing by telephone conference. The landlord attended and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional thirty 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 was provided.

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. They were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, they were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. They had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

A discussion of preliminary issues follows.

1. Service of Landlord's Notice of Hearing and Application for Dispute Resolution

As the tenant did not attend the hearing, the landlord provided testimony of service upon the tenant.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 8, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on April 13, 2021.

The landlord provided a copy of the receipt and the Canada Post Tracking Number in support of service.

Pursuant to sections 89 and 90 and the landlord's evidence, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on April 13, 2021.

2. Service of Tenant's Notice of Hearing and Application for Dispute Resolution

The landlord provided affirmed testimony that the landlord had not been served by the tenant with the Notice of Hearing and Application for Dispute Resolution.

The tenant did not attend the hearing.

I find the tenant did not serve the landlord with the documents as required under the Act.

3. Dismissal of 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.*

I have considered the testimony of the landlord. I have found the landlord served the landlord's documents. I have found the tenant did not serve the tenant's documents.

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

4. Amendments to Claim – Landlord

- a) Amount of Rent Outstanding and*
- b) Authorization to Apply the Security Deposit to the Award*

The landlord requested that the landlord's claim for outstanding rent be increased to

\$7,000.00. The landlord explained that the application was made in March 2021, the tenant has made no payment on outstanding or accruing rent since, and the amount of outstanding rent is currently \$7,000.00. The landlord submitted evidence in support of the monetary claim.

In the landlord's application, the landlord overlooked requesting that the security deposit of \$700.00 paid by the tenant and held by the landlord be applied to the award.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding accrued rent and to apply the security deposit to the award. The amendments would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to increase the landlord's overall claim to \$7,000.00 for unpaid rent to date and to authorize the landlord to apply the security deposit to the award.

In summary, the total monetary order requested by the landlord is \$7,000.00 as well as \$100.00 reimbursement of the filing fee and the application of the security deposit of \$700.00 to the award.

The landlord's monetary claim is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$7,000.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$700.00)
TOTAL CLAIM	\$6,400.00

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

The landlord provided uncontradicted evidence regarding the tenancy as the tenant did not attend the hearing. The landlord submitted a copy of the agreement and testified as to the following particulars of the tenancy:

ITEM	AMOUNT
Type of tenancy	Monthly
Date of beginning	March 31, 2019
Date of ending	Ongoing
Monthly rent payable on 1 st	\$1,400.00
Security deposit	\$700.00
Pet deposit	None
Outstanding rent at time of hearing	\$7,000.00
Outstanding utilities	Not claimed

The landlord testified that the landlord issued a Ten-Day Notice for non-payment of rent in the RTB form, a copy of which was submitted, details provided as follows:

ITEM	AMOUNT
Date of Notice	March 11, 2021
Method of Service	Registered mail sent March 11, 2021, receipt and tracking numbers submitted
Effective date of Service	March 16, 2021 (5 days after mailing per section 90)

Rent paid within five days of service	No
Application for Dispute Resolution	March 23, 2021

The Ten-Day Notice included the following provision:

You have 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

The landlord testified that the tenant did not pay the outstanding rent or apply for Dispute Resolution within the 5-day period.

The landlord testified that the tenant still occupies the unit. The landlord requested a 2-day Order of Possession and a Monetary Order as set out above.

Analysis

I have reviewed all relevant and admissible documentary evidence and testimony.

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 as testified by the landlord in accordance with sections 88 and 90 of the *Act*. I find the tenant did not pay the overdue rent within 5 days.

I have dismissed the tenant's application without leave to reapply.

Section 55(1) of the *Act* states as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application and upheld the landlord's Notice. As the tenant continues to occupy the unit, I find the landlord is entitled to an Order of Possession under section 55, effective two days after service of the Order.

The landlord has withdrawn the request for reimbursement of utilities. I accept the landlord's undisputed and supported evidence that the tenant is in arrears of rent in the amount of \$7,000.00. I therefore grant the landlord an award as requested in the amount of \$7,000.00.

As the landlord has been successful in this application, I grant the landlord reimbursement of the filing fee in the amount of \$100.00.

Under section 72, I grant the landlord authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Rent outstanding	\$7,000.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$700.00)
TOTAL MONETARY ORDER	\$6,400.00

As I have issued an Order of Possession under the Ten-Day Notice as well as a Monetary Order, it is not necessary to consider the balance of the landlord's claims which I dismiss with leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

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

I grant the landlord a Monetary Order in the amount of \$6,400.00 against the tenant.

These Orders must be served on the tenant.

If the tenant fails to comply with these Orders, the landlord may file the Orders with the Courts of British Columbia to be enforced.

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: July 02, 2021

Residential Tenancy Branch