



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR FF
Tenant: CNR RR AS FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 5, 2021. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing. However, the Tenant did not. The Landlord stated that he served the Tenant with the hearing documentation by leaving a copy of all evidence and the Notice of Hearing package with the Tenant’s adult roommate on July 15, 2021. I find the Tenant was sufficiently served with this package the same day it was left with the Tenant’s adult roommate.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The hearing was by telephone conference and began promptly, as scheduled, at 1:30 PM Pacific Time on October 5, 2021, as per the Notice of a Dispute Resolution Hearing provided to the parties. The line remained open while the phone system was monitored for 10 minutes and the only participant who called into the hearing during this time was the Landlord who was ready to proceed. The Landlord testified that the Tenant continues to occupy the rental unit and still owes rent.

After the ten minute waiting period, the Tenant's application was **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) 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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord, dated June 11, 2021, meets the requirements for form and content and the Landlord is entitled to an order of possession, effective 2 days after service.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the

Tenant's application to cancel the 10 Day Notice is dismissed. With respect to how much rent is owed as of this hearing, this will be addressed further below.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities and if so, how much?

Background and Evidence

The Landlord testified that rent in the amount of \$1,450.00 is due on the first of each month. The Landlord stated that the Tenant paid \$1,300.00 for the month of May 2021, and he has not paid any rent since that time. The Landlord stated that he hold a security deposit in the amount of \$675.00.

The Landlord explained that no rent has been paid since May, despite the fact that a 10 Day Notice was issued on June 11, 2021. The Landlord explained that the Tenant owed \$150.00 from May, plus \$1,450.00 for the months of June, July, August, September and October 2021, totalling \$7,400.00.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenant owes and has failed to pay \$7,400.00 in rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$7,400.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$450.00)
TOTAL:	\$6,825.00

Conclusion

As laid out in the preliminary matters section, and pursuant to section 55 of the Act, the Landlord is granted 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 and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,825.00**. 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.

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, 2021

Residential Tenancy Branch