



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord applies for an order for possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after issuing a 10-Day Notice to End Tenancy. They also seek a monetary award pursuant to s. 67 of the *Act* for unpaid rent and return of their filing fee pursuant to s. 72.

D.M. appeared on her own behalf as Landlord and was represented by J.C. as her counsel. D.M. attended as support for the Landlord. The Tenant did not appear, nor did anyone appear on his behalf. Pursuant to Rules 7.1 and 7.3 of the Rules of Procedure, the hearing began as scheduled at 1:30 PM and was conducted without participation from the Tenant.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The 10-Day Notice to End Tenancy, signed May 17, 2021, was served by the Landlord by way of registered mail sent on May 18, 2021. A registered mail receipt was provided as proof that the Notice to End Tenancy was sent on May 18, 2021 and the details were confirmed by the Landlord. The tracking information was also provided by the Landlord which indicates the package was returned as it was not picked-up by the Tenant.

Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled to serve the Notice to End Tenancy by way of registered mail pursuant to s. 88 of the *Act*. Policy Guideline #12 is clear that failing to pick-up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*. I find that the 10-Day Notice to End Tenancy was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have been served May 23, 2021.

The Landlord originally applied for an order for possession and monetary order by way of direct request, which was adjourned to this hearing due to issues with respect to proving service of the Notice of Dispute Resolution – Direct Request to the adjudicator. At the hearing, the Landlord confirmed sending the Notice of Dispute Resolution for this hearing and her original evidence by way of registered mail sent on August 9, 2021. A registered mail receipt was provided as well as tracking information indicating that the package was returned to the Landlord. I find that the Notice of Dispute Resolution and original evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have been served on August 14, 2021.

A second evidence package was prepared by the Landlord's counsel, with a cover letter dated September 24, 2021. Upon review of the evidence, much of it is replication of the original evidence sent via registered mail on August 14, 2021, though it is reorganized and contains some additional information. The Landlord advises having left the second evidence package at the Tenant's door on September 25, 2021 and included photographs as proof that it was left at the Tenant's door. I accept that the second evidence package does not run afoul the Rules of Procedure as the applicant Landlord is permitted to serve evidence not less than 14-days before the hearing as contemplated by Rule 3.14 of the Rules of Procedure. I find that the second evidence package was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have been served with the second evidence package on September 28, 2021, which was 14-days before today's hearing.

Preliminary Issue – Effective Date in the Notice to End Tenancy

The 10-Day Notice to End Tenancy states as its effective date May 5, 2021. The Landlord acknowledges this is in error and asks that I apply s. 53 of the *Act*, which automatically corrects the effective date to the earliest date that complies with the *Act*. Pursuant to s. 46(1) of the *Act*, the effective date is 10-days after it was received by the tenant. Accordingly, I correct the effective date of the notice to June 2, 2021.

Issue(s) to be Decided

- 1) Whether an order for possession should be granted?
- 2) What amount, if any, should be awarded to the Landlord for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord provided a copy of the written tenancy agreement. The tenancy began on January 1, 2005. Rent is \$500.00 payable on the 1st day of each month, which has remained consistent throughout the tenancy. The Landlord does not hold a security deposit or pet damage deposit in trust for the Tenant.

The Landlord indicated having issued the 10-Day Notice to End Tenancy after the Tenant failed to pay rent in accordance with the tenancy agreement. The notice is in form RTB-30, signed and dated May 17, 2021 by the Landlord, and lists the amount of rent outstanding.

The Landlord confirmed that the Tenant has not paid rent for the months of May, June, July, August, September, and October 2021. The Landlord further confirmed not having received a Notice of Dispute Resolution from the Tenant disputing the 10-Day Notice to End Tenancy.

The Landlord advised that the Tenant continues to reside within the rental unit.

Analysis

The Landlord seeks an order for possession and a monetary award for unpaid rent.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I find that the 10-Day Notice to End Tenancy signed May 17, 2021 complies with the formal requirements of s. 52 of the *Act*, it is signed and dated by the Landlord, gives the proper address for the rental unit, states the grounds for which the tenancy ends, and is in the approved form. The effective date has been corrected by virtue of s. 53 of the *Act*.

When a 10-day Notice to End Tenancy is issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. In this case, the Tenant did neither. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is June 2, 2021 and since that date the Tenant has been an overholding tenant.

As the Tenant is conclusively presumed to have accepted the end of the tenancy and continues to reside within the rental unit, the Landlord is entitled to an order for possession.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 26 of the *Act* sets out that a tenant must pay rent in accordance with the tenancy agreement unless they are authorized by the *Act* to deduct all or a portion of their rent. In the present circumstances, rent was not paid in accordance with the tenancy agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I accept that compensation for those months in which the Tenant was overholding is equivalent to the amount he ought to have been paying under the tenancy agreement. I further find that the Landlord could not have mitigated her damages as the Tenant continued to reside within the rental unit.

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent in the following amount:

Month	Rent Due	Rent Paid	Difference
May	\$500.00	\$0.00	-\$500.00
June	\$500.00	\$0.00	-\$500.00
July	\$500.00	\$0.00	-\$500.00
August	\$500.00	\$0.00	-\$500.00
September	\$500.00	\$0.00	-\$500.00
October	\$500.00	\$0.00	-\$500.00
TOTAL OWED			\$3,000.00

Accordingly, I find that the Tenant ought to compensate the Landlord \$3,000.00 and shall be ordered to pay that amount.

Conclusion

Pursuant to s. 55 of the *Act*, I grant an order for possession in favour of the Landlord. The Tenant shall give vacant possession of the rental unit to the Landlord within **two (2) days** of being served with the order for possession.

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$3,000.00** to the Landlord as compensation for unpaid rent.

As the Landlord was successful on their application, they are entitled to a return of the filing fee. Pursuant to s. 72, I order the Tenant pay \$100.00 to the Landlord, representing the filing fee paid by them for the application.

It is the Landlord's obligation to serve these orders on the Tenant.

If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: October 13, 2021

Residential Tenancy Branch