



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 signed July 6, 2021. The Landlord also seeks an order for unpaid rent pursuant to s. 67 of the *Act* and return of their filing fee pursuant to s. 72. The Landlord had originally filed for his relief via direct request. The adjudicator directed the application be determined by way of participatory hearing on today’s date due to different names being used in the tenancy agreement and the Notice to End Tenancy.

P.K. appeared on his own behalf as Landlord. The Tenant did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 9:30 AM on October 18, 2021. In accordance with Rule 7.3 of the Rules of Procedure, as the Tenant did not appear at the hearing, it was conducted without their participation.

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

The Landlord advised having served the 10-Day Notice to End Tenancy signed July 6, 2021 by way of posting it to the Tenant’s door on July 6, 2021. The Landlord indicated having also sent it to the Tenant by way of registered mail on July 6, 2021 as well. 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 on July 9, 2021.

The Notice of Dispute Resolution and evidence for the Landlord's direct request application was served by way of registered mail on August 11, 2021. I find the Notice of Dispute Resolution and evidence served in accordance with s. 89 of the *Act* and deem the Tenant to have been served with the direct request application materials on August 16, 2021 pursuant to s. 90.

Following the interim reasons of the adjudicator dated August 27, 2021, the Landlord advised having served with Notice of Reconvened Hearing, containing the information for today's hearing, on the Tenant by way of registered mail sent on September 28, 2021. I find that the Notice of Reconvened Hearing was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the Notice of Reconvened Hearing on October 3, 2021.

Issue(s) to be Decided

- 1) Whether an order for possession should be granted pursuant to the 10-Day Notice to End Tenancy signed July 6, 2021?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to return of their filing fee?

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 advised that the tenancy began on June 1, 2021. Rent of \$2,400.00 was due on the first day of each month. The Landlord acknowledged holding a security deposit of \$1,200.00 in trust for the Tenant. A written tenancy agreement was submitted into evidence by the Landlord.

The Landlord advised having served the 10-Day Notice to End Tenancy on July 6, 2021 after the Tenant had failed to pay rent on the 1st. The Landlord confirmed that the Tenant had not paid rent for July since the Notice to End Tenancy was served nor had the Landlord received an application from the Tenant disputing the Notice to End Tenancy.

The Landlord advised that the 10-Day Notice to End Tenancy had the name of M.N., who acted as an agent for the Landlord. The Landlord advised that the Tenant's had interacted with M.N. and was aware that M.N. acted on behalf of the Landlord with respect to the tenancy. The Landlord confirmed that he was the landlord for the residential property.

The Landlord said that the Tenant continues to reside within the rental unit has not paid rent for the months of July, August, September, and October 2021.

Analysis

The Landlord applies for an order for possession pursuant to s. 55, an order for unpaid rent pursuant to s. 67, and return of his filing fee pursuant to s. 72.

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 July 6, 2021 complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord's agent, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). I accept that the Landlord's agent, M.N., was known to the Tenant and there could be no confusion by the Tenant that the 10-Day Notice to End Tenancy signed July 6, 2021 applied to them.

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. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

HOW TO DISPUTE THIS NOTICE

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.

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 July 19, 2021. As the Tenant continues to reside at the rental unit, the Landlord shall have their 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 the Landlord's uncontroverted evidence that the Tenant has not paid rent in the following amount:

| Month | Rent Due | Rent Paid | Difference |
|------------------------|------------|-----------|-------------------|
| July 2021 | \$2,400.00 | \$0.00 | -\$2,400.00 |
| August 2021 | \$2,400.00 | \$0.00 | -\$2,400.00 |
| September 2021 | \$2,400.00 | \$0.00 | -\$2,400.00 |
| October 2021 | \$2,400.00 | \$0.00 | -\$2,400.00 |
| TOTAL RENT OWED | | | \$9,600.00 |

I find that the Tenant owes \$9,600.00 to the Landlord in unpaid rent and the Landlord shall have an order in that amount. In partial satisfaction of the Tenant's obligation for unpaid rent, I order that the Landlord retain the security deposit of \$1,200.00 held in trust for the Tenant. Considering the security deposit, the order shall be in the total amount of \$8,400.00.

Conclusion

Pursuant to s. 55, the Landlord shall have an order for possession. The Tenant shall give vacant possession of the rental unit to the Landlord no later than **two (2) days** after being served with the order for possession by the Landlord.

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$8,500.00** to the Landlord, representing total unpaid rent of \$9,600.00, the payment of the Landlord's filing fee of \$100.00 by the Tenant, and the \$1,200.00 security deposit retained by the Landlord.

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 18, 2021

Residential Tenancy Branch