



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

The Landlord applies for an order of possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after issuing a 10-Day Notice to End Tenancy on September 26, 2021 (the “10-Day Notice”). The Landlord also seeks an order for unpaid rent and for return of their filing fee.

J.H. appeared as Landlord. The Tenant failed to appear at the hearing and did not have someone attend on their behalf. The hearing was conducted without the Tenant’s participation pursuant to Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that they were not recording the hearing.

The Landlord advised having served the 10-Day Notice by personally serving it on the Tenant on September 26, 2021. I find that the Landlord served the 10-Day Notice in compliance with s. 88 of the *Act* on September 26, 2021.

The Landlord further advised having served the Notice of Dispute Resolution and evidence by personally serving them on the Tenant on October 23, 2021. I find that the Landlord served the application materials in compliance with s. 89 of the *Act* on October 23, 2021

Preliminary Issue – The 10-Day Notice

The Landlord failed to upload the written copy of the 10-Day Notice to the Residential Tenancy Branch in advance of the hearing. I proceeded to hear the Landlord's submissions and permitted the Landlord to upload the 10-Day Notice by end of day on November 23, 2021. I do so pursuant to Rule 3.19 of the Rules of Procedure and decline the requirement that the 10-Day Notice be served on the Tenant as evidence for this hearing on the basis that I am satisfied it was served on September 26, 2021. Other than the 10-Day Notice, no additional evidence was permitted.

Issue(s) to be Decided

- 1) Whether the Landlord is entitled to an order of possession?
- 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 either January or February 2021. There was no written tenancy agreement. Rent is \$1,150.00 due on the first day of each month. The Landlord confirmed holding a security deposit of \$575.00 in trust for the Tenant.

The Landlord indicated that the Tenant had undertaken some work in August 2021 for which the Tenant was permitted to deduct \$50.00 from their rent on September 1, 2021. Therefore, on September 1, 2021, the Tenant was to pay \$1,100.00 in rent.

The Landlord advised that the Tenant failed to pay rent in full on September 1, 2021 and made a partial payment of \$700.00 on that date. The Landlord further advised that the Tenant had made a second partial payment of \$300.00 on September 25, 2021.

The 10-Day Notice was issued on September 26, 2021 on the basis that rent had not yet been paid for September. The 10-Day Notice indicates that rent owed when the notice was issued was \$450.00.

The Landlord indicates that the Tenant has not made rent payments for the months of October and November 2021.

The Tenant continues to reside within the rental unit.

Analysis

The Landlord seeks an order of possession and an order 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.

When a 10-day Notice to End Tenancy 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.

I find that the Tenant failed to pay rent in full within 5-days of receiving the 10-Day Notice. I accept that the amount of \$450.00 set out in the 10-Day Notice does not correspond with the amount described by the Landlord. However, I accept that the Tenant owed \$100.00 as of September 26, 2021.

The Tenant failed to make pay rent in full and failed to dispute the 10-Day Notice. 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 October 7, 2021, as stated within the 10-Day Notice.

Accordingly, the Landlord shall have their order of possession.

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent at all in the months of October and November 2021. In total, I find that the Tenant owes the following amounts in rent:

Month	Rent Owed
September 2021	\$100.00
October 2021	\$1,150.00
November 2021	\$1,150.00
TOTAL RENT OWED	\$2,400.00

The Landlord shall have an order for unpaid rent in the amount of \$2,400.00. In partial satisfaction of the Tenant's arrears in rent, the Landlord may retain the security deposit of \$575.00 currently held in trust.

As the Landlord was successful in their application, they are entitled to their filing fee. The Tenant shall pay \$100.00 to the Landlord for return of their filing fee.

Conclusion

The Landlord shall have an order of possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit no later than **two (2) days** after being served with the order of possession.

The Landlord shall have a monetary award pursuant to s. 67 of the *Act* in consideration of the following:

Item	Amount
Unpaid Rent	\$2,400.00
Filing fee pursuant to s. 72(1)	\$100.00
Security deposit retained by Landlord pursuant to s. 72(2)	-\$575.00
TOTAL MONETARY ORDER	\$1,925.00

Accordingly, I order that the Tenant pay **\$1,925.00** to the Landlord pursuant to s. 67 of the *Act*.

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: November 23, 2021

Residential Tenancy Branch