



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, OLC, MNDCT, RR, LRE, PSF

Introduction

On July 14, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for Unpaid Rent, to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property and for five other issues. The matter was set for a participatory hearing via conference call.

Preliminary Matters

This hearing was scheduled for a conference call hearing on this date.

The Residential Tenancy Branch notified the Tenant to pick up a copy of the Notice of Dispute Resolution Proceeding on July 28, 2021. Regardless of picking up the Notice of Dispute Resolution Proceeding, the Tenant did not attend the teleconference hearing set for today at 11:00 a.m. The Landlord and her Advocate (the “Landlord”) called into the hearing and indicated that they had been served the Notice of Dispute Resolution Proceeding by the Tenant and were ready to proceed. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the only persons who had called into this teleconference was the Landlord and myself.

The Landlord stated that the Tenant was still occupying the rental unit and as such, required an Order of Possession for the rental unit.

After keeping the phone line open for 10 minutes, I dismissed the Tenant’s Application without leave to reapply as the Tenant failed to attend the hearing to present the merits of their Application.

Rule 7.1 and 7.3 of the *Residential Tenancy Branch - Rules of Procedure* stipulates that the hearing must commence at the scheduled time unless otherwise decided by the

Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the Application, with or without leave to re-apply.

This hearing was conducted in the Tenant's absence and the requests for an Order of Possession and a Monetary Order for Unpaid Rent were considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be Decided

As I have dismissed the Tenant's Application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, dated September 5, 2021 (the "10 Day Notice"), should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 55(1.1) of the Act?

Background and Evidence

The Landlord provided the following affirmed and undisputed testimony:

- There is no written Tenancy Agreement.
- The tenancy is an oral agreement and began on November 1, 2017.
- Rent has always been \$650.00 a month, due on the first of each month.
- The Landlord collected and still holds a \$300.00 security deposit.

The Landlord provided documentary evidence and affirmed testimony to support the following:

- The 10 Day Notice was personally served to the Tenant on September 5, 2021.
- The reason for service was that the Tenant failed to pay rent in August and September 2021.
- The effective move-out date on the 10 Day Notice was September 15, 2021.
- A proof of service document was submitted.

The Landlord submitted documentation to support that the Tenant has historically, paid rent; that the Landlord provided receipts; and, that the Tenant was currently in rental arrears since August 2021.

The Landlord is requesting an Order of Possession and a Monetary Order for unpaid rent until the end of the tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In the case of the Landlord's Notice to End Tenancy, the onus to prove that the 10 Day Notice is valid, is on the Landlord.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submissions, that the Tenant did not pay rent when it was due and is in arrears for the amount claimed. I note that there is no evidence before me that the Tenant had a right under the Act to not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving that the Tenant has failed to pay rent since August 2021, contrary to section 26 of the Act.

Section 46 of the Act authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Based on the undisputed evidence, I find that the Tenant received the 10 Day Notice on September 5, 2021, failed to pay the outstanding rent, and continued to occupy the rental unit without paying rent.

Section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with the Act.

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, state the grounds for ending the tenancy; and be in the approved form.

Upon review of the 10 Day Notice, I find that the 10 Day Notice, issued by the Landlord on September 5, 2021, complies with the requirements set out in Section 52.

I have dismissed the Tenant's Application and found that the 10 Day Notice is compliant with the Act. For these reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

Section 55(1.1) of the Act states if a tenant makes an Application for Dispute Resolution to dispute a landlord's Notice to End a Tenancy for Unpaid Rent, an order requiring the payment of the unpaid rent must be granted to the landlord if the landlord's Notice to End Tenancy complies with the Act and during the dispute resolution proceeding, the Arbitrator dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the Tenant's Application, have found that the 10 Day Notice complies with the Act, and because the Tenant is still occupying the rental unit, I order, pursuant to section 68(2) of the Act, that the tenancy ends as of the date of this Decision.

In accordance with section 55(1.1) of the Act, I grant an order to the Landlord for unpaid rent for August, September and October 2021; plus, the first 16 days of November 2021, as noted below.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit in the amount of \$300.00, in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent: August, September, October 2021	\$1,950.00
Unpaid Rent: November 1-16, 2021 @ \$21.66/day	346.56
Less Security Deposit	-300.00
Total Monetary Order	\$1996.56

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$1,996.56.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Section 55(1.1) of the Act, I grant the Landlord a Monetary Order for \$1996.56. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 16, 2021

Residential Tenancy Branch