



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jim More Than a Roof Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPU-DR, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for Unpaid Rent and Utilities pursuant to Sections 46, 55 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

The Landlord was advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure (the "ROP") prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord served a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities on July 14, 2021 by posting it to the Tenant's door (the "10 Day Notice"). The Landlord provided an RTB#34 form as proof of service of the 10 Day Notice. I find the Tenant was deemed served with the 10 Day Notice on July 17, 2021 pursuant to Sections 88(g) and 90(c) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenant by posting the notice on his door on August 19, 2021 (the "NoDRP package"). I find that the Tenant was deemed served with the documents for this hearing five days after mailing them, on August 22, 2021, in accordance with Sections 89(2)(d) and 90(c) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for Unpaid Rent and Utilities?
2. Is the Landlord entitled to recovery of the application filing fee pursuant to Section 72 of the Act?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy was signed on December 16, 2014 and began on January 1, 2015. Monthly rent is \$517.00 payable on the first day of each month. Utility charges are included in the rent amount. No security deposit was collected at the start of the tenancy. As of the date of the hearing, the Tenant still resided in the rental unit.

After the Landlord served the 10 Day Notice on July 14, 2021, the Tenant paid rent as follows:

	Rent Owing	Rent Paid	O/S Rent
June	\$517.00		\$517.00
28-Jun		\$350.00	\$167.00
July	\$517.00		\$684.00
23-Jul		\$659.00	\$25.00
29-Jul		\$517.00	-\$492.00
August	\$517.00		\$25.00
September	\$517.00	\$517.00	\$25.00
October	\$517.00	\$517.00	\$25.00
November	\$517.00	\$517.00	\$25.00
December	\$517.00	\$517.00	\$25.00

I found in the RTB hearing communications notes for this hearing, that the Tenant had applied for dispute resolution on July 21, 2021 to cancel the Landlord's 10 Day Notice and that hearing was scheduled for August 31, 2021 to which no parties attended. When I asked the Landlord about this hearing, he said he was never notified that he was to attend an earlier hearing on this matter. Since serving the 10 Day Notice on the Tenant, the Landlord has provided receipts for money received that state the rental payment is for use and occupancy only. The Landlord is seeking an Order of Possession for the 10 Day Notice served on July 14, 2021.

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. The onus to prove their case is on the person making the claim. As this hearing was conducted pursuant to ROP 7.3, in the Tenant's absence, all the Landlord's testimony is undisputed.

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

- 46 (1) *A landlord may 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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) pay the overdue rent, in which case the notice has no effect, or*
 - (b) dispute the notice by making an application for dispute resolution.*
- (5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) must vacate the rental unit to which the notice relates by that date.*

The Landlord's 10 Day Notice was deemed served on July 17, 2021. The Tenant had 5 days after receiving the 10 Day Notice, that is up to July 22, 2021, to either pay the overdue rent or apply for dispute resolution. The Tenant applied for dispute resolution but did not notify the Landlord a hearing was set for the matter and did not attend himself on the set day. The Arbitrator assigned to that dispute, found that as neither the Landlord nor the Tenant attended, the matter was dismissed without leave to re-apply.

I find the 10 Day Notice submitted into documentary evidence complies with Section 52 of the Act. I also find that the rent collected by the Landlord since serving the 10 Day Notice is for use and occupancy only and the Landlord has not implied that the tenancy would continue.

Pursuant to Section 46(5), I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was July 24, 2021 and must vacate the rental unit pursuant to Section 55 of the Act.

Section 55(2) of the Act reads as follows:

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

I find that based on the Landlord's undisputed testimony, and the Tenant's failure to attend this hearing and present evidence relating to this application, that the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act. I grant an

Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

In addition, having been successful, I find the Landlord is entitled to recovery of the filing fee paid to start this application, and pursuant to Section 72(1) of the Act, I grant a Monetary Order to the Landlord for recovery of the application filing fee.

Conclusion

The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant the Landlord a Monetary Order in the amount of \$100.00, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 Act.

Dated: December 15, 2021

Residential Tenancy Branch