



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Landlord: OPR-DR, MNR-DR, FFL
Tenant: CNR-MT, PSF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.
- a monetary order for unpaid rent or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and their daughter attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the

hearing, I also confirmed from the online teleconference system that the landlord, their daughter, and I were the only ones who had called into this teleconference.

The parties were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The parties confirmed that they understood.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Accordingly, **in the absence of any submissions in this hearing from the tenant, I order the tenant's entire application dismissed without leave to reapply.**

Section 55(1) and (1.1) of the *Act* reads as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

A copy of the 10 Day Notice was submitted for this hearing, and I find that the landlords' 10 Day Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice. As the tenant notes in their application that they did not receive the 10 Day Notice until August 13, 2021, I correct the effective date of the 10 Day Notice to August 23, 2021. The landlord testified in the hearing that they have not received confirmation from the tenant that the tenant had moved out, but believe that the tenant has vacated the premises. The landlord requested an Order of Possession. Accordingly, the landlord is granted a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlord testified that as of the hearing date, the tenant owed \$1,700.00 in outstanding rent. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$1,700.00 for the unpaid rent.

The landlord testified that they were still in possession of the tenant's security deposit in the amount of \$425.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.

The landlord requested reimbursement of the filing fee for their application. The landlord testified that they had served the tenant with their cross application by posting the package on the tenant's door on September 8, 2021.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(f) by any other means of service provided for in the regulations.

As the tenant did not attend the hearing to confirm service of the landlord's application, and as I am not satisfied that the landlord had provided sufficient evidence to demonstrate that their application package was served in accordance with section 89 of the *Act* as noted above, the landlord's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I find that the landlord is entitled to an Order of Possession.

I grant an Order of Possession to the landlords effective two **days after service of this Order** 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.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. I issue a \$1,275.00 Monetary Order in favour of the landlord for the remaining amount. 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 and enforced as an Order of that Court.

I dismiss the landlord's application to recover the filing fee without leave to reapply.

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: December 23, 2021

Residential Tenancy Branch