



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL, OPR-DR, MNR-DR, FFL, MT-CNR, RP, RR

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- 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;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend.

This matter was set for a conference call hearing at 11:00 a.m. on this date. The landlord stated that he received the tenant's notice of hearing package and aware of the tenant's listed issues.

The hearing proceeded in the absence of the tenant after waiting 5 minutes.

The landlord provided affirmed direct testimony confirming that he filed two applications that were identical. The landlord stated to proceed on the landlord's application filed via the Direct Request Process on November 7, 2021. The landlord stated that the application filed on November 1, 2021 is withdrawn. As such, no further action is required for the application filed on November 1, 2021. The hearing proceeded in the absence of the tenant.

The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 12, 2021. The landlord referenced a submitted copy of a Canada Post Receipt and Canada Post Customer Receipt Tracking label as confirmation.

The conference call hearing concluded at 39 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the tenant's application dismissed without leave to reapply. I make no findings on the merits of the matter.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent dated November 1, 2021 which was served to the tenant by posting it on the rental unit door on November 1, 2021 with a witness. The landlord referenced a completed Proof of Service document which confirms that the service was made on November 1, 2021 by posting it to the rental unit door. The landlord clarified that it was "taped to the door" facing out.

The landlord stated that the 10 Day Notice dated November 1, 2021 provides for an effective end of tenancy date of November 4, 2021. The landlord was unable to clarify why he chose this date but stated that it was an obvious clerical error.

The 10 Day Notice states that the tenant failed to pay rent of \$9,750.00 that was due on November 1, 2021. The landlord clarified that monthly rent is \$3,250.00 and that the tenant had failed to pay rent for September 2021, October 2021 and November 2021 at \$3,250.00 per month.

The landlord stated that as of the date of this hearing the tenant still occupies the rental unit and has not made any rent payments at all. The landlord stated that the tenant has also failed to pay monthly rent for December 2021 and January 2022 for an additional \$6,500.00 in rental arrears.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, the landlord has provided undisputed affirmed evidence that the tenant was served with the 10 Day Notice dated November 1, 2021 by “taping it to the door” on November 1, 2021. The landlord provided a copy of a completed proof of service document as confirmation of service with a witness. On this basis, I find that the tenant was properly served with the 10 Day Notice dated November 1, 2021. I note that this is also confirmed by the tenant’s application that was dismissed.

I note for the record that despite the landlord making a clerical error by placing the November 4, 2021 date as the effective end of tenancy date, the Act allows an Arbitrator to correct the notice under section 53 of the Act which states in part,

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

As such, the 10 Day Notice dated November 1, 2021’s effective end of tenancy date is corrected to November 11, 2021.

The landlord seeks an order of possession and a monetary claim of unpaid rent as well as recovery of the filing fee.

The landlord provided undisputed affirmed evidence that the tenant failed to pay monthly rent as per the 10 Day Notice dated November 1, 2021 and subsequently up to the date of this hearing. The landlord stated that no rent has been paid since the 10 Day Notice was served on November 1, 2021 and that no rent was paid from September 2021 to the date of this hearing on January 7, 2022 for a total of \$16,250.00.

I accept the undisputed evidence of the landlord and uphold the 10 Day Notice dated November 1, 2021 and grant the landlord an order of possession to be effective 2 days after it is served upon the tenant. I also grant the landlord a monetary order for \$16,350.00 for unpaid rent and recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$16,350.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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: January 11, 2022

Residential Tenancy Branch