



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BARLOW HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

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

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 or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- 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 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:30 a.m. The landlord 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 and I were the only ones who had called into this teleconference.

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

Rule 7.3 of the Rules of Procedure provides as follows:

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.

As the tenant did not attend this hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that on September 24, 2021, the tenant was served with the landlord's application and evidence package by registered mail. The landlord included the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with copies of the landlord's application and evidence on September 29, 2021, 5 days after mailing.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice on September 2, 2021 by way of posting the 10 Day Notice on his door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on September 5, 2021, 3 days after posting.

Although the landlord had applied for a Monetary Order of \$700.00 in their initial claim, the tenant has failed to pay the full monthly rent for December 2021 and January 2022. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This fixed-term tenancy originally began on March 15, 2020, and continued on a month-to-month basis with monthly rent currently set at \$1,050.00, payable on the first of the month. The landlord still holds the \$525.00 security deposit for this tenancy.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on September 2, 2021 for failing to pay the September 2021 rent in full. The landlord testified that the tenant did make partial payments in the amount of \$550.00 on September 7, 2021 and \$525.00 on September 19, 2021, which included the \$25.00 late fee. The landlord submitted in evidence the receipts for these two payments, with a note that the payments were for use and occupancy only. The landlord testified that the tenant failed to pay half of the rent for December 2021, and did not pay any rent for January 2022.

The landlord is requesting an Order of Possession as a monetary order for the following:

Item	Amount
Unpaid Rent for December 2021	\$525.00
Unpaid Rent for January 2022	1,050.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$1,675.00

Analysis

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

- 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.

Although the tenant did pay the September 2021 rent, the tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. I find that the 10 Day Notice complies with section 52 of the *Act*.

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 the landlord is entitled to a 2 day Order of Possession. 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 landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord provided undisputed evidence that the tenant failed to pay the rent in full for the months for December 2021 and January 2022. I find that the landlord is entitled to \$1,575.00 in arrears for the above period.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit in the amount of \$525.00. 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 claim.

Conclusion

I dismiss the tenant's entire application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$1,150.00 Monetary Order in favour of the landlord under the following terms:

Item	Amount
Unpaid Rent for December 2021	\$525.00
Unpaid Rent for January 2022	1,050.00
Recovery of Filing Fee	100.00
Less Security Deposit	-525.00
Total Monetary Order	\$1,150.00

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.

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 24, 2022

Residential Tenancy Branch