



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

The hearing was reconvened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for its application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:53 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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 Dispute Resolution Proceeding. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated December 14, 2021 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, this hearing was scheduled and came on for hearing on January 11, 2022 to consider the Landlord's application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Landlord was instructed to serve the notice of reconvened hearing, the Interim Decision and all other required documents, upon the Tenant within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

The Landlord testified she served the Tenant with the Notice of Dispute Resolution Proceeding (“NDRP”) on the Tenant by registered mail on December 16, 2021. The Landlord submitted a registered mail receipt and tracking number to corroborate his testimony regarding service of the NDRP on the Tenant. Pursuant to section 90 of the Act, I deem the NDRP was served on the Tenant pursuant to sections 88 and 89 of the Act on December 21, 2021, being five days after its posting by the Landlord.

The Landlord stated the Tenant did not served any evidence on her for these proceedings.

Preliminary Issue – Amendment of Tenant’s Surname

At the hearing, I noted that the spelling of the Tenant’s surname in the Landlord’s application was different from its spelling in the tenancy agreement and the 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated October 26, 2021 (“10 Day Notice”) submitted into evidence by the Landlord. The Landlord stated that she had incorrectly transcribed the Tenant’s surname when she made her online application. The Landlord made a request that I amend her application to correct the spelling of the Tenant’s surname.

Rule of Procedure 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that the Tenant should reasonably have anticipated that an amendment would be requested by the Landlord to correct a typographical error in the Landlord’s application when the tenancy agreement and the 10 Day Notice disclosed the correct spelling of his surname. I amend the Landlord’s application to correct the spelling of the Tenant’s surname.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for non-payment of rent?
- monetary compensation for unpaid rent?
- recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's application and my findings are set out below.

The Landlord submitted a copy of the tenancy agreement dated May 20, 2021 between the Landlord, the Tenant and another person ("VU"). The Landlord testified the tenancy commenced June 1, 2021. The tenancy agreement specifies the tenancy has a fixed term ending August 30, 2021 with rent of \$1,150.00 payable on the 1st of each month. To be clear, the fixed term specified in the tenancy agreement is in fact 1 day short of August 31, 2021. The Tenant and VU paid a security deposit of \$550.00. The Landlord acknowledged she was still holding the security deposit in trust for the Tenant and VU.

The Landlord testified she served the Tenant with the 10 Day Notice on the Tenant in-person on October 26, 2021. The Landlord submitted a Proof of Service on Form RTB-34 which was signed by the Tenant to acknowledge receipt of the 10 Day Notice. I find the Tenant was served with the 10 Day Notice pursuant to section 88 of the Act and was deemed to have received the 10 Day Notice on October 26, 2021.

The landlord testified that the Tenant is in arrears as follows:

Date	Owed	Paid	Balance
01-Sep-21	\$1,150.00		\$1,150.00
01-Sep-21		\$850.00	\$300.00
01-Oct-21	\$1,150.00		\$1,450.00
Total	\$2,300.00	\$850.00	\$1,450.00

The Landlord stated that Tenant and VU are still in possession of the rental unit. The Landlord stated additional rental arrears have accrued since October 1, 2021. However,

she stated she was only seeking payment for the arrears of \$1,450.00 at this time and an Order of Possession because the Tenant and VU are refusing to pay any rent now.

The Landlord stated she was not aware of the Tenant or VU making any application for dispute resolution to dispute the 10 Day Notice.

Analysis

Section 26 of the Act states:

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Act provides very limited and specific circumstances when a tenant may withhold rent such as: (i) where a tenant has overpaid a security deposit and/or pet damage deposit; (ii) where a tenant has previously overpaid the rent; (iii) where authorization has been given by the landlord or an arbitrator or; (iv) where the landlord does not reimburse the tenant for emergency repairs that have been made by the Tenant.

The undisputed testimony of the Landlord was the Tenant and VU are required to pay \$1,150.00 on the 1st of each month and, as of October 1, 2021, the Tenant and VU owe the Landlord rental arrears of \$1,450.00

Subsection 46(4) of the Act states:

- 46(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.

The 10 Day Notice was served on the Tenant in person on October 26, 2021 and the Tenant is deemed to have received the 10 Day Notice on October 26, 2021. Pursuant to section 46(4) of the Act, the Tenant had until November 1, 2021, being the next business day after the five-day dispute period ended, to either pay the rental arrears or make an application for dispute resolution to dispute the 10 Day Notice. I find the Tenant did not pay the rental arrears stated on the 10 Day Notice within the five-day dispute period. The Landlord stated that he aware unaware of the Tenant or VU making an application for dispute resolution to dispute the 10 Day Notice.

Section 46(5) of the Act states:

- 46(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.

[emphasis in italics added]

Based on the undisputed testimony of the Landlord, I find the monthly rent is \$1,150.00 and that the Tenant and VU did not pay the rent in full for September 1, 2021 or October 1, 2021 nor make an application for dispute resolution to dispute the 10 Day Notice within 5 days of deemed service of the 10 Day Notice. I find that the Tenant and VU are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being November 6, 2021. As such, I find the 10 Day Notice was issued for a valid reason.

I have reviewed the 10 Day Notice and find it complies with section 52 form and content requirements. Sections 55(2), 55(3) and 55(4) of the Act states:

- 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:
- (a) a notice to end the tenancy has been given by the tenant;
 - (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;*
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.

- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (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*
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

[emphasis added in italics]

The Tenant must compensate the Landlord \$1,450.00 for the unpaid rent. Pursuant to section 55(4)(b) of the Act, I order the Tenant to pay the Landlord \$1,450.00 in satisfaction of the arrears. Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to deduct \$550.00 from the Tenant's security deposit in partial satisfaction of the rental arrears.

I find that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(1) of the Act, I order that the Tenant provide the Landlord with vacant possession of the rental unit.

As the Landlord has been successful in its application, she may recover her \$100.00 filing fee from the Tenant pursuant to section 72(1) of the Act.

Conclusion

Pursuant to sections 67 and 72(1) of the Act, I order that the Tenant pay the Landlord \$1,000.00 calculated as follows:

Description	Amount
Rental Arrears	\$1,450.00
Filing Fee of Application	\$100.00
Security Deposit Credit	-\$550.00
Total	\$1,000.00

Pursuant to section 55 of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached orders by the Landlord.

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.

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 14, 2022

Residential Tenancy Branch