



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, MNRL-S, 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 Landlord's Use of Property pursuant to Sections 49, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's counsel, SD, the Landlord, FY, and the Tenant, FC, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (the "ROP") prohibits the recording of dispute resolution hearings. The Landlord testified that they were not recording this dispute resolution hearing. The Tenant asked if she could record this hearing, and I advised her it was prohibited.

The Landlord served the Two Month Notice to End Tenancy For Landlord's Use of Property on August 4, 2021 by posting the notice on the Tenant's door (the "Two Month Notice"). The reasons noted on the Two Month Notice was the rental unit will be occupied by the landlord or the landlord's close family member – the father or mother of the landlord or landlord's spouse. The Tenant confirmed receipt of the Two Month

Notice. I find that the Two Month Notice was served on the Tenant on August 4, 2021 pursuant to Section 88(g) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing on the Tenant by posting the notice on her door on November 2, 2021 and by registered mail on November 4, 2021 (the "NoDRP-OP package"). The Landlord also served an RTB-42L Amendment on the Tenant by registered mail on November 27, 2021. SD referred me to the Canada Post registered mail receipts with tracking numbers submitted into documentary evidence as proof of service. I have noted the registered mail tracking numbers on the cover sheet of this decision. The Tenant confirmed receipt of each of these packages at the hearing. I find that the Tenant was served with the documents for this hearing five days after mailing them on November 9, 2021 and December 2, 2021, in accordance with Sections 88(c) and 89(1)(c) of the Act.

Preliminary Matter - Adjournment

At the outset of the hearing, the Tenant requested an adjournment. The Tenant provided her family practitioner's letter dated December 6, 2021 stating his patient is undergoing assessment for concerns of serious medical conditions. There was also reference to a previous medical assessment by another family practitioner on May 26, 2021 who recommended an initial CT Scan. The Tenant did not submit medical documents from a specialist for her serious medical conditions. The Tenant also claimed to be dealing with a severe and ongoing pest infestation in the laneway house. The tenant sought for the hearing of December 17, 2021 to be adjourned to be heard with her upcoming hearing of March 8, 2022 because she would have support systems in place on March 8, 2022.

The Landlord opposed the adjournment request. The Landlord's counsel stated the Tenant did not dispute the Two Month Notice. The Tenant confirmed via email with the Landlord that she would use September 2021 as her month of free rent, and she would leave at the end of October. She did not leave. Since that time, the Tenant has not paid rent, and this prejudices the Landlord as the non-payment of rent has been an ongoing issue.

ROP 7.8 permits an adjournment after the dispute resolution hearing begins. ROP 7.9 sets out the criteria an Arbitrator will consider when deciding to allow or disallow a party's request for an adjournment. The Two Month Notice was served at the beginning of August 2021 and the Tenant did not dispute it. The Tenant made arrangements with

the Landlord about taking her equivalent amount of one month's rent allowed when served with a Two Month Notice. She has not paid any rent since the end of September and I find this does seriously prejudice the Landlord. At the hearing the Tenant stated that an Order of Possession set for December 31, 2021 would be helpful for her to secure alternative housing. The Tenant seemed prepared at the hearing to discuss the monetary issues which are set for hearing in March 2022.

The Tenant claims to be afflicted with serious medical issues, but only provided her general practitioner's medical letter from December 6, 2021. That letter does not set out the serious medical issues but does state the Tenant may require assistance with processing complex paperwork. At the hearing, the Tenant was able to clearly answer questions and make choices of future prospects regarding this tenancy.

I find that the Tenant was able to fully participate in this hearing. I find that granting an adjournment prejudices the Landlord beyond what is fair in the circumstances of this matter. I decline an adjournment for this file.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

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.

The fixed term tenancy began on November 1, 2019 and ended on October 31, 2020. The tenancy continued on a month-to-month basis. Monthly rent is \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The RTB-42L Amendment submitted by the Landlord states she wants to recover money for unpaid rent in the amount \$12,400.00. The description in the Amendment states, '*The Tenant has made several partial payments of rent and has missed some*

months of full rent over the course of the tenancy. The Landlord wishes to add a monetary claim to recover all unpaid rent payment in arrears.'

The Tenant took no objection with the Landlord's reporting of rent payments during the course of the tenancy. The Tenant said, '*I paid what I could*'.

RENT	Rent Owing	Rent Paid	O/S Rent
April 2020	\$2,000.00		\$2,000.00
April 15, 2020		\$1,000.00	\$1,000.00
April - other		\$300.00	\$700.00
May 2020	\$2,000.00		\$2,700.00
May 1, 2020		\$1,000.00	\$1,700.00
May - other		\$300.00	\$1,400.00
June 2020	\$2,000.00		\$3,400.00
June 1, 2020		\$1,000.00	\$2,400.00
June - other		\$300.00	\$2,100.00
July 2020	\$2,000.00		\$4,100.00
July 2, 2020		\$1,000.00	\$3,100.00
July - other		\$300.00	\$2,800.00
August 2020	\$2,000.00		\$4,800.00
August 4, 2020		\$1,000.00	\$3,800.00
August - other		\$300.00	\$3,500.00
September	\$2,000.00		\$5,500.00
September 2, 2020		\$1,000.00	\$4,500.00
September 21, 2020		\$300.00	\$4,200.00
October 2020	\$2,000.00		\$6,200.00
October 5, 2020		\$700.00	\$5,500.00
October 8, 2020		\$600.00	\$4,900.00
November 2020	\$2,000.00		\$6,900.00
November 2, 2020		\$375.00	\$6,525.00
November 18, 2020		\$1,275.00	\$5,250.00
December 2020	\$2,000.00		\$7,250.00
December 11, 2020		\$1,650.00	\$5,600.00
January 2021	\$2,000.00		\$7,600.00
January 4, 2021		\$1,650.00	\$5,950.00
February 2021	\$2,000.00		\$7,950.00
February 2, 2021		\$1,650.00	\$6,300.00

RENT	Rent Owing	Rent Paid	O/S Rent
March 2021	\$2,000.00		\$8,300.00
March 2, 2021		\$1,650.00	\$6,650.00
April 2021	\$2,000.00		\$8,650.00
April 4, 2021		\$1,650.00	\$7,000.00
May 2021	\$2,000.00		\$9,000.00
May 3, 2021		\$1,650.00	\$7,350.00
June 2021	\$2,000.00	\$1,650.00	\$7,700.00
July, 2021	\$2,000.00		\$9,700.00
July 2, 2021		\$1,650.00	\$8,050.00
August 2021	\$2,000.00		\$10,050.00
August 3, 2021		\$1,650.00	\$8,400.00
September 2021*	\$0.00		\$8,400.00
October 2021	\$2,000.00		\$10,400.00
November 2021	\$2,000.00		\$12,400.00
December 2021	\$2,000.00		\$14,400.00

* equivalent amount of one month's rent

The Landlord served the Two Month Notice on August 4, 2021. The Tenant did not apply for dispute resolution within the 15 days after receiving the Two Month Notice although she believes the notice was not made in good faith. The Tenant opted to use, pursuant to Section 51(1) of the Act, the equivalent of one month's rent for the month of September's rent. The Landlord is seeking an Order of Possession of the residential property.

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.

The Two Month Notice served on the Tenant complied with the form and content requirements of Section 52 of the Act. Pursuant to Section 49(9) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The effective date of the Two Month Notice was October 4, 2021; however, I find this date is incorrect and pursuant to Section 53(3) the effective date is automatically changed to October 31, 2021.

Section 55(2) of the Act sets out how an Order of Possession can be granted to the Landlord.

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*

(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I find the time has expired for the Tenant to apply for dispute resolution, and I uphold the Landlord's Two Month Notice. I find the Landlord has met the burden of proof and is entitled to an Order of Possession for the residential property pursuant to Section 55(4)(a) of the Act which will be effective at 1:00 p.m. on January 15, 2022.

The Tenant is also in arrears paying rent and the Landlord filed an Amendment seeking a Monetary Order to recover the amount of unpaid rent. The Tenant did not dispute the amounts the Landlord reported as rent arrears, because of that, pursuant to Section 55(4)(b) of the Act, I find that the total outstanding rent amount is \$14,400.00. In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application. The Landlord is awarded a Monetary Order as follows:

Monetary Award

Total Outstanding Rent:	\$14,400.00
Plus Filing Fee:	\$100.00
Less Security Deposit:	(\$1,000.00)
TOTAL MONETARY AWARD:	\$13,500.00

Conclusion

I grant an Order of Possession to the Landlord effective at 1:00 p.m. on January 15, 2022. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order of \$13,500.00 to the Landlord. The Monetary Order may be filed in and enforced as an order of the Provincial Court of British Columbia – Small Claims.

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: January 04, 2022

Residential Tenancy Branch