



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FORME DEVELOPMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR MNR-DR FFL

Introduction

This matter originally proceeded by way of a Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession for unpaid rent and a monetary order for unpaid rent, plus the filing fee. On January 6, 2022, an adjudicator adjourned the matter to a participatory hearing which was held on this date, February 3, 2022 at 9:30 a.m. Pacific Time.

The landlord agent, RL (agent) attended the teleconference as scheduled, while the tenant called into the hearing several minutes late. Both parties provided affirmed testimony. The agent also presented their documentary evidence some of which was presented prior to the tenant calling into the hearing. As the tenant called into the hearing late, the hearing was not restarted and continued as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, which state:

7.1 Commencement of the dispute resolution hearing.

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

7.3 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.

Preliminary and Procedural Matters

The parties were informed that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

In addition, the agent testified that in addition to the rent owed between May and November 2021, as the application was original filed on November 13, 2021, the tenant has subsequently failed to pay \$1,000.00 for December 2021 rent and none of the \$4,000.00 owing for February 2022 rent. The tenant testified that they continue to occupy the rental unit. At the outset of the hearing, the landlord requested to amend their application for the additional rent owed, which I find does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement. As a result, I amend the landlord's application to \$12,600.00 in rent arrears before the filing fee is applied. The landlord also requested to offset any amount with the tenant's security deposit of \$2,000.00, which I have the authority to do under section 38 of the Act if the tenancy is ending.

The tenant claims she did not find out about the hearing until January 2022. As a result, service was considered of the original application and the Notice of Reconvened Hearing. The agent testified that the original application was served by posting to the tenant's door on November 19, 2021 and photo evidence showing that personal service was completed was submitted in support. Although the tenant claims she cannot recall receiving the original application, I find the photo evidence supports that it was posted to the tenant's door on November 19, 2021.

Regarding the Notice of Reconvened Hearing Package dated January 6, 2022 (Reconvened Hearing Package), I accept the agent's testimony that the Reconvened Hearing Package was served by posting to the tenant's door on Sunday, January 9, 2022 at 3:15 p.m. based on the photo evidence showing the agent's digital watch in the photo with the Reconvened Hearing Package and the rental unit address. Given the above, I find the tenant was sufficiently served in accordance with the Act.

The tenant requested an adjournment due to a learning disability. Rule 7.9 of the Rules of Procedure indicate the following criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

[reproduced as written]

As the landlord first applied on November 13, 2021 and I am satisfied that the tenant was sufficiently served on November 19, 2021, I deny the tenant's request for an adjournment as I find the tenant has already had many months to prepare to have an agent or advocate assist them and failed to do so. In addition, I find that an adjournment would unfairly prejudice the landlord who has suffered additional loss of rent since the application was filed. The hearing proceeded as a result.

As the agent presented evidence to support that they are acting on behalf of company FD, I approve the landlord company FD being listed as landlord under the Act. I make this finding pursuant to section 62(3) of the Act.

The agent also requested to offset any amount owed with the tenant's security deposit, which I will address later in this decision, if applicable.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the Act?
- Is the landlord entitled to a monetary order for unpaid rent/loss of rent under the Act?
- Is the landlord entitled to the filing fee under the Act?
- Should the security deposit be offset from any amount owed under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A new tenancy agreement began on December 10, 2020. Monthly rent was \$4,000.00 per month and was due on the first day of each month. The tenant paid a \$2,000.00 security deposit at the start of the tenancy, which the landlord continues to hold.

There is no dispute that the tenant received the 10 Day Notice dated October 6, 2021 as the tenant stated that they received the 10 Day Notice on October 6, 2021. The tenant confirmed that they did not file an application to dispute the 10 Day Notice and instead were negotiating with the landlord to pay rent. The 10 Day Notice indicates that \$7,600.00 was owed in unpaid rent due on October 1, 2021. The tenant did not provide any supporting evidence that rent was paid in full within 5 days of being served with the 10 Day Notice. In fact, the tenant agreed with the amount owing in rent as stated by the agent as follows:

1. May 1, 2021 rent, tenant still owes \$1,600.00
 2. June 1, 2021 rent, tenant still owes \$2,000.00
 3. August 1, 2021 rent, tenant still owes \$2,000.00
 4. September 1, 2021 rent, tenant still owes \$2,000.00
 5. December 1, 2021 rent, tenant still owes \$1,000.00
 6. February 1, 2022 rent, tenant still owes \$4,000.00
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TOTAL RENT OWING = \$12,600.00

The agent stated that they are not seeking a two (2) day order of possession and will be satisfied with an order of possession effective February 28, 2022 at 1:00 p.m.

Analysis

Based on the documentary evidence from the landlord and the testimony provided by the landlord and tenant, and on the balance of probabilities, I find the following.

Order of Possession – Firstly I find the tenant was served as stated by the agent with the 10 Day Notice on October 6, 2021 and that the tenant did not pay the \$7,600.00 owing within 5 days of October 6, 2021, nor did the tenant file an application to dispute the 10 Day Notice. Pursuant to section 46(5) of the Act, when a tenant receives a 10 Day Notice and fails to dispute the 10 Day Notice or pay the full amount of rent owing within 5 days after receiving the 10 Day Notice, the tenant is **conclusively presumed** pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice, which was October 16, 2021. Pursuant to

section 55 of the Act, I grant the landlord an order of possession effective **February 28, 2022 at 1:00 p.m.** I have used that date as the landlord agreed to February 28, 2022, versus a two-day order of possession.

Monetary claim – Given the above, I am satisfied that the landlord has met the burden of proof and that the tenant has breached section 26 of the Act, which applies and states:

Rules about payment and non-payment of rent

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.

[emphasis added]

Given the above, I find the tenant has failed to pay rent of **\$12,600.00** as claimed and described above.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act.

Given the above, I find the landlord has established a total monetary claim of **\$12,700.00** in rent owing, plus the filing fee. Pursuant to section 38 of the Act, I **authorize** the landlord to retain the tenant's full **\$2,000.00** security deposit in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to sections 67 and 72 of the Act in the amount of **\$10,700.00** for the balance owing by the tenant to the landlord.

I find the tenancy ended on October 16, 2021.

Conclusion

The landlord's application is fully successful.

I find the tenancy ended on October 16, 2021. The landlord has been granted an order of possession effective February 28, 2022 at 1:00 p.m., which must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$12,700.00 in rent owing, plus the filing fee. The landlord is authorized to retain the tenant's full \$2,000.00 security deposit in partial satisfaction of the landlord's monetary claim. I note the security deposit has accrued \$0.00 during the tenancy. I grant the landlord a monetary order pursuant to sections 67 and 72 of the Act in the amount of \$10,700.00 for the balance owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is cautioned that they can be held liable for all costs related to enforcing both the order of possession and the monetary order.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 4, 2022

Residential Tenancy Branch