



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On November 14, 2021, the Landlord applied for:

- an order of possession, having issued a 10 Day Notice for Unpaid Rent, dated November 2, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, noting that the Landlord holds the security deposit; and
- the filing fee.

The Landlord attended the hearing, the Tenant did not. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified they served the Notice of Dispute Resolution Proceeding and evidence on the Tenant on November 18, 2021 by registered mail, and provided a tracking number, as noted on the cover page of this decision. Having checked the tracking number, I find the Landlord's documents served on the Tenant on November 18, 2021, in accordance with section 89 of the Act, and deem the documents received by the Tenant on November 23, 2021, in accordance with section 90 of the Act.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to the filing fee?

Background and Evidence

The Landlord provided the following particulars about the tenancy. It began on November 1, 2016, the Tenant pays \$598.00, rent is due on the first of the month, and the Tenant paid a security deposit of \$360.00, which the Landlord still holds.

A copy of the tenancy agreement is submitted as evidence, along with a completed application for rent subsidy, indicating that the Tenant's rent contribution is \$598.00.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified that the 10 Day Notice was served on the Tenant by posting it to the door on November 2, 2021.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant failed to pay rent in the amount of \$974.00, due November 1, 2021.

The Landlord testified that the Tenant would not pay rent in full each month, therefore always had a running balance owing. The Landlord submitted as evidence a copy of the ledger, showing the rent payments and balances owing to November 2, 2021.

The Landlord testified that the Tenant currently owes rent as follows:

Month	Monthly Rent	Rent Paid	Monthly Balance Owing	Total Balance Owing
October 2021	-	-	-	\$376.00
November 2021	\$598.00	\$600.00	-\$2.00	\$374.00
December 2021	\$598.00	\$500.00	\$98.00	\$472.00
January 2022	\$598.00	\$400.00	\$198.00	\$670.00
February 2022	\$598.00	\$0.00	\$598.00	\$1,268.00

Analysis

Pursuant to section 46(1) 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 the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content provisions of section 52.

Sections 46 (4) and (5) of the Act state:

- (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.
- (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.

Based on the Landlord's affirmed undisputed testimony, I find the Landlord served the 10 Day Notice in accordance with section 88 of the Act, and deem it received by the Tenant on November 5, 2021. As the 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

I find that the Tenant did not file an application for dispute resolution within 5 days of November 5, 2021, the timeline granted under section 46(4) of the Act. Accordingly, I find that the Tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 15, 2021, and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession.

Based on the Landlord's undisputed affirmed testimony, and their ledger submitted as evidence, I find the Tenant owes unpaid rent in the amount of \$1,268.00, which she must pay the Landlord, pursuant to section 55(4) of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in their application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlord to retain \$360.00 of the Tenant's security deposit in partial satisfaction of the amount owed to the Landlord, as follows:

Total outstanding rent	\$1,268.00
Filing fee	\$100.00
Less Tenant's security deposit	-\$360.00
Monetary award	\$1,008.00

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant.

The Landlord is granted a monetary order in the amount of \$1,008.00.

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: February 16, 2022

Residential Tenancy Branch