



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;

The landlord attended with the agent NN (the "landlord"). The tenant joined the hearing five minutes after it started.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Preliminary Issue – Name of Landlord, Amendment

The landlord testified that NN, inadvertently named as a landlord in the application, is an agent.

A review of the tenancy agreement confirms that NN is not a named landlord.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The

authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

Further to the testimony of the parties, a review of the tenancy agreement which does not name NN as a landlord, and the provisions in the Act, I therefore amend the respective Application to correctly remove the name of NN as a landlord.

Preliminary Matter - Prohibition Against Recordings

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

Preliminary Matter – Amendment of Claim

The landlord testified they inadvertently applied for an Order of Possession for Cause under section 47 instead of an Order of Possession for Unpaid Rent under section 46. The landlord requested the claim accordingly be amended.

The landlord testified as follows. The only Notices that were issued to the tenant were 10 Day Notices dated January 2, 2022, and February 2, 2022.

The landlord submitted a copy of a 10 Day Notice dated January 8, 2022 for outstanding rent of \$850.00 due January 1, 2022. The landlord also submitted a Proof of Service document in the RTB form stating the Notice was served by posting to the door on January 8, 2022, thereby effecting service under section 99 of the Act 3 days later, that is, on January 11, 2022. The tenant testified he did not apply to dispute the Notice.

A complete copy of the 10 Day Notice of February 1, 2022 was not submitted. The landlord stated she issued the Notice and the tenant acknowledged receipt.

The tenant agreed with the landlord's testimony that two 10 Day Notices were issued. The tenant testified that he understood the issues at this hearing related to an Order of Possession under the 10 Day Notices and a Monetary Order for outstanding rent, which he acknowledged was \$1,700.00.

A review of the documents submitted as evidence by the landlord, supports their testimony.

As stated above, section 64(3)(c) of the *Act* and *Rule 4.2* of the *Rules* allow me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. I find the tenant could anticipate an amendment and is not prejudiced by the amendment.

I therefore amend the application to state that the landlord's claim is for an Order of Possession under a 10 Day Notice, that is, the 10 Day Notice dated January 8, 2022.

Preliminary Issue – Settlement During Hearing

Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise, and achieved a resolution of one aspect of the dispute.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order. This settlement agreement was reached in accordance with section 63.

The parties agreed as follows:

- 1) The tenancy between the parties will end at 1:00 PM on February 28, 2022, by which time the tenant and any other occupants will return vacant possession of the rental unit to the landlord.

In support of the agreement described above, the landlord is granted an Order of Possession effective 1:00 PM on February 28, 2022, and after service on the tenant. The landlord may serve and enforce this Order if the tenant fails to move out as specified above.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order of \$1,700.00 for unpaid rent?

Background and Evidence

The landlord provided a copy of the tenancy agreement and the following testimony about the background of the tenancy with which the tenant agreed.

INFORMATION	DETAILS
Type of Tenancy	Monthly
Beginning Date	May 1, 2021
Vacancy Date	Ongoing
Rent payable on first of month	\$850.00
Security deposit	\$425.00
Arrears of Rent	\$1,700.00 for January and February, 2022

As stated above, the tenant agreed to an Order of Possession effective on February 28, 2022. The tenant did not agree to a Monetary Order for unpaid rent although he acknowledged he did not pay the rent due January and February 2022 and rent in the amount of \$850.00 per month for two months was owing for a total of \$1,700.00.

The landlord issued a 10 Day Notice dated January 8, 2022 and testified the document was posted to the tenant's door on that day, thereby effecting service three days later, on January 11, 2022, pursuant to section 90 of the Act.

A copy of the 10 Day Notice was submitted which is in the standard RTB form. The Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date.

The tenant stated he did not pay the rent owing for January and February 2022 because of conflicts with the landlord. The tenant testified he did not file an application to dispute the 10 Day Notice.

The landlord submitted copies of receipts for rent and testified that the tenant owed \$1,700.00 in rent. The landlord requested a Monetary Order of \$1,700.00. The tenant acknowledged owing rent in this amount.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

I accept the landlord's credible testimony and find the landlord issued a 10 Day Notice dated and served as testified. A copy of the Notice was submitted as evidence which is in the RTB form. The Notice stated the tenant owed \$850.00 in rent. The tenant did not file an Application for Dispute Resolution.

The landlord requested a Monetary Order of \$1,700.00 for outstanding rent to date as subsequently unpaid rent had accumulated. They submitted copies of the rental receipts and documentary evidence of the amount owing. The tenant acknowledged this amount is now owing for rent.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and the parties have agreed the tenant shall vacate February 28, 2022 by 1:00 PM.

I have granted the landlord an Order of Possession effective February 28, 2022 by 1:00 PM upon consent of the tenant.

I also grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$1,700.00 which the tenant acknowledged is owing..

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlord a monetary order for **\$3,512.50** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent – January 2022	\$850.00
Award to landlord for outstanding rent – February 2022	\$850.00
(Less security deposit)	(\$425.00)
Monetary Order	\$1,275.00

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Conclusion

As agreed by the parties, the landlord is granted an Order of Possession effective 1:00 PM on February 28, 2022, and after service on the tenant. The landlord may serve and enforce this Order if the tenant fails to move out as specified above.

The landlord is also granted a Monetary Order in the amount of **\$1,275.00**. This Order must be served on the tenant. The landlord may enforce this Monetary Order in the Courts of the Province of BC.

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 25, 2022

Residential Tenancy Branch