



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, RP, FFT

For the landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an order requiring the landlord to carry out repairs, pursuant to section 32; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:11 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by the owner AS (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. Advocate JE also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue - Tenant's Application Dismissed with Leave to Reapply

The landlord affirmed he did not receive the notice of hearing for the tenant's application. The landlord learned that the tenant applied for dispute resolution at the hearing.

Based on the landlord's convincing testimony, I find the tenant did not serve the notice of hearing in any of the ways described in section 89 of the Act. The tenant's application can not proceed fairly when the respondent has not been notified of the application.

I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of the timeline to reapply.

Preliminary Issue – Service of the Landlord's Application

The landlord affirmed he served the notice of hearing and the evidence (the materials) by registered mail on November 25, 2021. The packages were mailed to the rental unit's address. The tracking number is recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the proof of registered mail, I find the landlord served the materials in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on November 30, 2021, in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend the application for \$950.00 in unpaid rent to include an additional \$2,850.00 for the unpaid rent of December 2021, January and February 2022.

The increase in the landlords' monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlords' monetary claim for unpaid rent to \$3,800.00.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on March 01, 2019. Monthly rent is \$950.00, due on the first day of the month. At the outset of the tenancy the landlord collected and holds a security deposit (the deposit) in the amount of \$475.00. The tenancy agreement was submitted into evidence. It states that monthly rent is \$950.00.

The landlord served the Notice by attaching it to the rental unit's door on November 05, 2021 at 7:00 P.M. A witnessed proof of service (RTB 34) was submitted into evidence.

A copy of the November 05, 2021 notice to end tenancy was submitted into evidence. It indicates: "\$950.00 in unpaid rent due on November 01, 2021". The effective date is November 15, 2021.

The landlord testified the tenant continues to occupy the rental unit and has not paid rent in November and December 2021, January and February 2022.

The landlord is claiming for an order of possession and a monetary order for the unpaid rent of November and December 2021, January and February 2022. In the amount of \$3,800.00.

The landlord submitted into evidence a direct request worksheet indicating the tenant has not paid rent due on November 01, 2021 in the amount of \$950.00.

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 the case is on the person making the claim.

Order of possession

Based on the landlord's convincing testimony and the proof of service (RTB 34), I find the landlord served the Notice on November 05, 2021, in accordance with section 88(g) of the Act. The tenant is deemed to have received the Notice on November 08, 2021, in accordance with section 90(c) of the Act.

Section 46(5) of the Act states:

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.

Section 46(5) of the Act is mandatory, and I have no discretion as to its application. The tenant did not dispute the Notice.

Pursuant to section 53(2) of the Act, the effective date of the Notice is corrected to November 18, 2021. Otherwise, I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord's representative, gives the address of the rental unit, states the grounds to end tenancy and is in the approved form.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice, November 18, 2021 and must move out of the rental unit.

As the tenant is occupying the rental unit, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(2)(b) of the Act.

Unpaid rent

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's uncontested testimony and the tenancy agreement that the tenant must pay monthly rent of \$950.00 on the first day of the month and that the tenant did not pay rent in November and December 2021, January and February 2022.

Based on the landlord's undisputed testimony, the Notice and the direct request worksheet, I find the tenant did not pay rent for November and December 2021, January and February 2022 and is in arrears in the amount of \$3,800.00 (\$950.00 per month x 4 months).

Per section 26 of the Act, I award the landlord unpaid rent in the amount of \$3,800.00 (\$950.00 per month for November and December 2021, January and February 2022).

Filing fee and deposit

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$475.00 deposit in partial satisfaction of the monetary award.

In summary:

Unpaid rent (November and December 2021, January and February 2022, \$950.00 x 4)	\$3,800.00
Filing fee	\$100.00
Subtotal	\$3,900.00
Deposit	\$475.00
Monetary award	\$3,425.00

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 26 and 72 of the Act, I authorize the landlord to retain the \$475.00 deposit and grant the landlord a monetary order in the amount of \$3,425.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 09, 2022

Residential Tenancy Branch