



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OLC, OPR, MNR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or put conditions on the landlords right to enter the suite pursuant to section 70.

While the landlord’s agent attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

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.

The landlords agent gave sworn testimony that on January 25, 2022 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenant. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlords' application and evidence.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice on January 3, 2022, by way of personal service. The landlord submitted documentation that the tenant acknowledged and signed that they had been served. The landlord filed their application in response to the tenant's application. I find that the tenant was aware of this hearing and that they chose not to dial in. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?
Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?
Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent gave undisputed testimony regarding the following facts. The tenancy began on December 1, 2021, with monthly rent set at \$1700.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$850.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on January 3, 2022. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service. The landlord's agent testified that the tenant has made some partial payments for December and January but hasn't paid any rent for February or March. The agent testified that as of today's hearing the amount owing is \$1150.00 for January, \$1700.00 for February and \$1700.00 for March for a total amount of \$4550.00. The agent requests a monetary order for that amount, the recovery of the filing fee and an order of possession.

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply. I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, January 13, 2022. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlord's agent provided undisputed evidence that the tenant failed to pay the rent in full for the months of January 2022 through March 2022 in the amount of \$4550.00. Therefore, I find that the landlords are entitled to \$4550.00 in arrears for the above period.

Although the landlords did not apply to retain the deposit, the landlords continue to hold the tenant's security deposit in the amount of \$850.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord is granted an order of possession.

The landlord has established a claim for \$4650.00. I order that the landlord retain the \$850.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$3800.00. This order may be filed in the Small Claims 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: March 28, 2022

Residential Tenancy Branch