



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, AK, Landlord's On-site Caretaker, GC, and the Tenant, KB, and Support, BH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice on October 11, 2021 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was deemed served on October 14, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package for this hearing on January 20, 2022 by Canada Post registered mail (the

“NoDRP package-OP/MN”). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them, on January 25, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord’s request to amend their original application from \$4,200.00 to \$7,700.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this oral periodic tenancy began in May 2021. Monthly rent is \$700.00 payable on the first day of each month. No security deposit was collected at the start of the tenancy, and the Tenant still resides in the rental unit.

The reasons in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$4,200.00 in outstanding rent on October 1, 2021. The effective date of the 10 Day Notice was October 25, 2021.

The Landlord testified that the Tenant has not paid any rent since May 2021. The On-site Caretaker also confirms that they have not received any rent from the Tenant. The Landlord is seeking a Monetary Order for \$7,700.00 for the outstanding rent, and an Order of Possession for the rental unit.

The Tenant submits that he needs a written tenancy agreement which he can take to social services for rental assistance. The Tenant said he paid rent in May 2021, but he did not provide a receipt to prove that statement. After that time, the Tenant confirmed that he has not paid any rent.

The Landlord stated that at no time has the Tenant asked for a written tenancy agreement. The Landlord maintained that if any tenant brought a form from social services, he would not hesitate to sign it. This Tenant has not brought him anything from social services.

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 their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

For the Tenant's benefit, Section 26(1) of the Act sets out the rules about paying rent, it 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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

- 46** (1) *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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (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.*

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Pursuant to Section 26(1) of the Act, the Tenant is required to pay rent when it is due whether or not the Landlord complies with this Act, the regulations or the tenancy agreement.

After receiving the 10 Day Notice, the Tenant had five days to pay the outstanding rent or apply for dispute resolution. The Tenant did neither of these steps. I find that the Tenant did not pay rent in the month of May 2021. I find pursuant to Section 46(5)(a) of the Act, that the Tenant is conclusively presumed to have accepted that the tenancy has ended and must vacate the rental unit. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession. Sections 55(2) and 55(4) of the Act read as follows:

Order of possession for the landlord

- 55** (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*
- ...
- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for*

dispute resolution and the time for making that application has expired;

...

- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
- (a) *grant an order of possession, and*
 - (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

The Tenant did not apply for dispute resolution, and the time to apply has expired. I have upheld the Landlord's 10 Day Notice and I find the total outstanding rent is \$7,700.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act and is entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$7,700.00
Plus Application Filing Fee:	\$100.00
TOTAL OWING:	\$7,800.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$7,800.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: March 11, 2022

Residential Tenancy Branch