



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC, LRE, FFT**

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended with the lawyer SS as well as the agents MD and ML (“the landlord”). The landlord TT and the agents MD and ML provided affirmed testimony.

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

1. Attendance of Tenant

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 57 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

2. Recording

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

3. Delivery of Decision

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

4. Service

As the tenant did not attend the hearing into the tenant's applicaiton, the landlord provided testimony regarding service of the landlord's materials.

The agents MD and ML provided affirmed testimony that they personally served the tenant with the landlord's documents on March 1, 2022. The landlord submitted a Proof of Service document in the RTB form in support of service.

Further to the evidence submitted by the landlord, I find the landlord served the tenant with the landlord's evidence in compliance with section 89 of the Act.

5. Burden of Proof

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

Residential Tenancy Branch Rules of Procedure - Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

6. *Tenant's Application – Dismissal*

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 reapply.*

As the applicant tenant did not attend the hearing and in the absence of any evidence or submissions, I order the tenant's application dismissed without leave to reapply

7. *Correction – Landlord's Name*

The landlord testified that DGB is the name of the firm of lawyers representing the landlord. DGB is not a landlord.

Accordingly, I corrected the names of the parties to remove DGB as a party landlord.

8. *Order of Possession*

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord. Section 55 states 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.

9. Monetary Order Requested by Landlord for Outstanding Rent

Section 55(2)(b) addresses the request by the landlord for a Monetary Order for outstanding rent. The section states as follows:

- (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:
 - (a) a notice to end the tenancy has been given by the tenant;
 - (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;

I have dismissed the tenant's application to dispute the Notices issued by the landlord.

Accordingly, the landlord requested a Monetary Order for outstanding rent in the amount of \$22,500.00. This amount includes additional accumulated rent for the month of March 2022. The landlord's evidence pre-dated the due date for that month and as such the landlord's materials do not reflect the full outstanding rent.

Section 64(3)(c) of the *Act* and section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent for March 2022. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, I amended the landlord's application to increase the landlord's claim for outstanding rent as requested. The total monetary order requested by the landlord is \$22,500.00.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and an Order of Possession?

Background and Evidence

The landlord submitted comprehensive evidence including Affidavits and substantial testimony. Not all the evidence is referenced. Only key admissible facts are set out in my Decision.

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing.

The landlord submitted a copy of the lease and summarized the background of the tenancy between the landlord and the tenant as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	February 1, 2021
Fixed Term End Date	January 31, 2022, then monthly
Rent payable on first of month	\$4,500.00
Security deposit	\$2,250.00
Arrears of Rent	\$22,500.00 (November 2021 to March 2022)

The landlord testified that the tenant did not pay rent for the month of November 2021. The amount of rent is stated in the tenancy agreement. The landlord testified as to the arrears of rent of \$22,500.00.

The tenant has not provided written authorization to the landlord to apply the deposit to outstanding rent.

The landlord testified the landlord issued a 10 Day Notice in the RTB form, a copy of which was submitted. The details are as follows:

INFORMATION	DETAILS
Type of Notice	10 Day Notice
Date of Notice	November 21, 2021
Effective Date of Notice	December 6, 2021
Date and Method of Service	November 23, 2021, posting
Effective Date of Service	November 26, 2021
Reasons for Issuance	Nonpayment rent due November 1, 2021
Application for Dispute Resolution filed	November 25, 2021
Arrears	\$22,500.00

The landlord submitted a Proof of Service document in the RTB form as well as photos of the posted documents in support of the testimony regarding service.

The 10 Day 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 applied to cancel the Notice as stated above and the tenant's application has been dismissed without leave to reapply.

The landlord provided uncontradicted testimony and supporting evidence that the amount claimed remain unpaid and owing to the landlord. The tenant has made no payment on rent and the total amount of \$22,500.00 is owing.

The landlord requested a Monetary Order in this amount.

As the tenant's application to cancel the 10 Day Notice has been dismissed, the landlord requested an Order of Possession.

One Month Notice

The landlord testified they issued a One Month Notice to End Tenancy for Cause (“One Month Notice”) dated November 23, 2021 and served by posting that day. A copy of the Notice was submitted as evidence which is in the RTB form. The effective date of the Notice is December 31, 2012. A Proof of Service document in the RTB form as well as photos of the posted documents were submitted in support of service.

The reasons for the issuance as stated in the Notice are:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the building in which the unit is located does not permit occupants to have dogs. The landlord informed the tenant of this prohibition at the beginning of the tenancy. Accordingly, no pet deposit was paid at the start of the tenancy.

Nevertheless, the tenant has a dog and continues to have a dog. The tenant acknowledged having a dog in in her written submissions upon making this Application for Dispute Resolution as follows:

One example of her [the agent] lying, is by saying I had a pit bull and using it to intimidate her, serving me with papers to “remove the large pit bull” I actually have a miniature pinscher.

The landlord sent the tenant a letter of warning dated November 18, 2022, a copy of which was submitted, requesting the dog be removed from the unit. The landlord stated that the tenant continues to occupy the unit with the dog.

The landlord testified the tenant has not permitted the landlord to enter the unit upon proper notice on several occasions. The landlord also testified that the tenant has changed the locks to the unit without the landlord's permission and has not provided the landlord with a key or access information.

Analysis

10 Day Notice

I find the form and content of the 10 Day Notice complies with section 52 of the Act.

I accept the landlord's testimony that the tenant was served with the 10 Day Notice as testified and in accordance with the Act.

I accept the landlord's testimony and documentary evidence and find the tenant did not pay the overdue amount and has not made any payment on rent.

The tenant has not attended the arbitration. I have dismissed the tenant's application.

Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit.

The landlord testified the tenant remains in the unit.

Based on the uncontradicted testimony and documentary evidence of the landlord, I grant the landlord an Order of Possession and a Monetary Order pursuant to section 67 for outstanding rent as requested.

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

I authorize the landlord to apply the security deposit to the award.

My award to the landlord is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$22,500.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$2,250.00)
TOTAL	\$20,350.00

In summary, I grant the landlord an Order of Possession effective on 2 days notice and a Monetary Order for \$20,350.00.

As I have granted the landlord an Order of Possession, I will not consider the entitlement of the landlord to an Order of Possession under the One Month Notice.

Conclusion

The landlord is granted an Order of Possession effective on 2 days notice.

The landlord is granted a Monetary Order for \$20,350.00.

These Orders must be served on the tenant. The Orders may be registered and enforced 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: March 18, 2022

Residential Tenancy Branch