



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This hearing by conference call was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act"). The Landlord applied for the following:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for its application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:59 pm in order to enable the Tenant to call into this teleconference hearing scheduled for 1:30 pm. Three agents for the Landlord ("WM", "TM", "MM") and the Landlord's legal counsel ("RH") attended the hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that WM, TM, MM, RH and I were the only ones who had called into this teleconference.

RH stated the Landlord served the Tenant with the NDRP and the Landlord's evidence ("NDRP Package") on the Tenant's door on March 23, 2022. I find the NDRP Package was served on the Tenant pursuant to sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I deem the NDRP Package was served on the Tenant on March 26, 2022, being three days after service on the Tenant's door.

RH stated the Tenant did not serve any evidence on the Landlord for these proceedings.

Preliminary Issue – Amendment to Include Monetary Claim for Unpaid Rent

WM stated that the Tenant has not vacated the rental unit and there are now rental arrears of \$5,850.00 owing by the Tenant to the Landlord for the months of May 2021 through to May 2022 inclusive. WM stated the Landlord is seeking to recover all rental arrears owing by the Tenant and requested an amendment to the Application.

Rule of Procedure 4.2 of the RoP states:

4.2 Amending an application 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, 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.

As the Tenant has not given up possession of the rental unit, I find a claim for recovery by the Landlord for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenant. Based on the above, I order that the Application be amended to claim \$5850.00 for rental arrears pursuant to Rule 4.2.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for non-payment of rent?
- monetary compensation for unpaid rent?
- recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

RH stated the Landlord purchased the residential property on January 1, 2021 and it was not provided with a written tenancy agreement from between the Tenant and the former landlord. RH stated the rent is \$450.00 payable on the 1st day of each month. RH stated the Tenant paid \$225.00 as a security deposit which the Landlord is holding in trust on behalf of the Tenant. RH stated the Tenant is still in possession of the rental unit.

RH stated the 10 Day Notice was served on the Tenant's door on March 23, 2022. RH submitted a signed and witnessed Proof of Service to End Tenancy on Form RTB-34 to corroborate her testimony on service of the 10 Day Notice on the Tenant. I find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

WM stated the Tenant paid the rent for January, February and March 2021 but has not paid any rent since that date. TM testified the 10 Day Notice stated the Tenant had rental arrears of \$2,500.00 as of October 1, 2021. WM submitted a spreadsheet disclosing the Tenant owes a total of \$5,850.00 for the months of May 2021 through to May 2022 inclusive, calculated as follows:

Date	Rent Owed	Paid	Balance
01-May-21	\$450.00	\$0.00	\$450.00
01-Jun-21	\$450.00	\$0.00	\$900.00
01-Jul-21	\$450.00	\$0.00	\$1,350.00
01-Aug-21	\$450.00	\$0.00	\$1,800.00
01-Sep-21	\$450.00	\$0.00	\$2,250.00
01-Oct-21	\$450.00	\$0.00	\$2,700.00
01-Nov-21	\$450.00	\$0.00	\$3,150.00
01-Dec-21	\$450.00	\$0.00	\$3,600.00
01-Jan-22	\$450.00	\$0.00	\$4,050.00
01-Feb-22	\$450.00	\$0.00	\$4,500.00
01-Mar-22	\$450.00	\$0.00	\$4,950.00
01-Apr-22	\$450.00	\$0.00	\$5,400.00
01-May-22	\$450.00	\$0.00	\$5,850.00
Total	\$5,850.00	\$0.00	\$5,850.00

RH stated the Landlords are not aware of the Tenant making an application for dispute resolution to dispute the 10 Day Notice.

Analysis

1. Landlord's Claim for Order of Possession

Subsection 26(1) and 46(1) through 46(5) of the Act state:

- 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.
- 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]*.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (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.*

[emphasis added in italics]

The undisputed testimony of RH was the 10 Day Notice was served on the Tenant's door on November March 23, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have been served with the 10 Day Notice on March 26, 2022. Pursuant to section 46(4), the Tenant had until March 31, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. The Tenant did not make an application to dispute the 10 Day Notice.

I find the Landlord has satisfied its onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. Pursuant to section 46(5), the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice. Furthermore, I am satisfied upon hearing the undisputed testimony of WM, the Tenant has rental arrears of \$5,850.00 as of May 2022. Based on the foregoing, Landlord has demonstrated, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason.

Subsections 55(2) and 55(4) state:

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:

- (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;
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[...]

(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.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. The Tenant has not made an application to dispute the 10 Day Notice. Accordingly, pursuant to section 55(4)(a) of the Act, I order the Tenant provide the Landlord with vacant possession of the rental unit. As the Tenant did not vacate the rental unit on the effective date of the 10 Day Notice on November 15, 201, I find the tenancy ended on May 19, 2022 pursuant to section 68(2)(b) of the Act.

2. Monetary Order for Unpaid Rent:

Pursuant to the undisputed testimony of WM, I am satisfied the Tenant has rental arrears of \$5,850.00 as of May 2022. Pursuant to section 55(4)(b), I order the Tenant pay the Landlord \$5,850.00 in satisfaction of the rental arrears owed. Pursuant to section 72(2)(b), the Landlord may deduct the Tenant's security deposit of \$225.00 from the rental arrears owed by the Tenants, leaving a balance of \$5,625.00.

3. Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in it's application, it may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 72(1) of the Act.

Conclusion:

I order the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and the attached Order of Possession by the Landlord. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Tenant pay the Landlord \$5,725.00, representing the following:

Description	Amount
Rental Arrears for May 2021 through May 2022 inclusive	\$5,850.00
Landlord's Filing Fee for Application	\$100.00
Less Tenant's Security Deposit	-225.00
Total	\$5,725.000

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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: May 23, 2022

Residential Tenancy Branch