



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMI Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, CNC, OLC, MNDCT**

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 requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (“Regulation”) or tenancy agreement pursuant to section 67 of the Act.

This is a continuation of a hearing which began on February 14, 2022 and was adjourned upon the request of both parties by Interim Decision of that date.

RY, the agent of the landlord, attended (“the landlord”).

The tenant did not attend although I left the teleconference hearing connection open for 27 minutes to enable the tenant to call. 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 the landlord and I were the only ones who had called into this teleconference.

At the previous hearing, the parties each acknowledged receipt of the other party's documents. There were no issues raised regarding service.

The landlord testified they were not recording the hearing.

The landlord confirmed the email address to which the Decision shall be sent.

1. Preliminary Issue - Dismissal of Tenant's Application

Rule 7.3 of the Rules of Procedure provides that 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.

Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered. Only the evidence referred to by the landlord was used in this this decision.

As the tenant has not attended the hearing and presented evidence, and the landlord has attended, I dismiss the tenant's application without leave to reapply.

2. Preliminary Issue - Order of Possession

I informed the landlord of the following.

If I dismissed the tenant's application to cancel the Notices issued in compliance with the *Act*, I am 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.

Issues to be Decided

- Is the tenant entitled to cancellation of the Ten-Day Notice and One Month Notice as well as reimbursement of the filing fee pursuant to Sections 46(4), 47 and 72 of the *Act*?
- Is the landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

Background

The landlord provided uncontradicted evidence regarding the tenancy as the tenant did not attend the hearing. The landlord testified as follows.

The landlord submitted a copy of the tenancy agreement.

The parties entered into monthly tenancy agreement starting May 1, 2021. Rent is \$1,375.00 payable on the first. The tenant submitted a security deposit of \$687.50 at the beginning of the tenancy which is held by the landlord.

The landlord submitted as evidence a ledger showing all payments made by the tenant from the start of the tenancy to May 2022. The landlord testified the tenant owed rent in the amount of \$7,341.67.

The tenant has not vacated the premises.

The Ten-Day Notice was dated November 29, 2021. A copy of the Notice was submitted which was in the standard RTB form. The Notice required the tenant to vacate the premises for non-payment of rent, then \$2,429.17, by December 8, 2021, corrected to December 12, 2021.

The landlord served the tenant by posting to the tenant's door on November 29, 2021, thereby effecting service under Section 90 on December 2, 2021.

The landlord testified the tenant did not pay the outstanding rent within the five-day period and rent subsequently accumulated.

The tenant brought an application to cancel the Notice on December 4, 2021.

The landlord requested authorization to apply the security deposit to the award.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Outstanding rent	\$7,341.67
(Less security deposit)	(\$687.50)
TOTAL	\$6,654.17

Analysis

To be effective, the Ten-Day Notice must comply with the provisions of Section 52. I find the Ten-Day Notice complied with Section 52 of the *Act*.

I find the Ten-Day Notice was properly served upon the tenant on December 2, 2021, pursuant to Sections 88 and 90 of the *Act*.

A tenant may dispute a notice under Section 46 by making an application for dispute resolution within five days after the date the tenant receives the notice. As the tenant has failed to appear at this hearing or submit any testimony or evidence, I have dismissed the tenant's application to dismiss the Notice as well as the tenant's other applications.

Pursuant to Section 55(1), the director must grant to the landlord an Order of Possession of the rental unit if the landlord's notice to end tenancy complies with Section 52 and the tenant's application is dismissed. I therefore grant the landlord an Order of Possession.

As the tenant did not attend the hearing and no evidence was entered or submissions made, I have ordered the Application for Dispute Resolution dismissed without leave to reapply.

Section 55(1.1) states that in these circumstances, the director must grant an order requiring the payment of the unpaid rent.

Section 55(1.1) states:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find the landlord has proven the amount of rent owing and I also grant the landlord a monetary award pursuant to section 67 in the amount of \$7,341.67.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

In summary, I grant the landlord a monetary order for **\$6,754.17** calculated as follows:

ITEM	AMOUNT
Outstanding rent	\$7,341.67
(Less security deposit)	(\$687.50)
TOTAL Monetary Order	\$6,654.17

I find there is no need to consider the landlord's application for an Order of Possession under the One Month Notice which is dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an Order of Possession which is effective two days after service on the tenant.

I also grant the landlord a Monetary Order in the amount of **\$6,654.17**

These Orders must be served on the tenant. They may be filed and enforced in the Courts of the Province of BC.

The landlord's application pursuant to the One Month Notice is dismissed with leave to reapply.

This Order must be served on the tenant.

If the tenant fails to comply with this Order, the landlord may file the Order with the Supreme Court of British Columbia to be 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: May 12, 2022

Residential Tenancy Branch