



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNRL FFL
For the tenant: CNR AS FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 9, 2022 (10 Day Notice), for a monetary order of \$6,980.00 for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, for permission to assign or sublet the rental unit, and to recover the cost of the filing fee.

Landlord ZA (landlord) attended the teleconference hearing and was affirmed. The hearing process was explained to the landlord, and they were given an opportunity to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

As the tenant did not attend the hearing although they were provided a Notice of Hearing dated February 17, 2022 (Notice of Hearing) for their application and pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rules 7.3 and 7.4, and after the mandatory 10-minute waiting period, the tenant's application was **dismissed without leave to reapply**, as they failed to attend the hearing, and the landlord did attend and were ready to proceed.

I have also considered service of the landlord's application on the tenant. The landlord testified that the tenant was served on April 13, 2022 with the Landlord's Notice of Dispute Resolution Proceeding document dated April 13, 2022 (Notice of Hearing 2),

application and documentary evidence. A registered mail tracking number was submitted in evidence, which has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail tracking website, the tenant signed for and accepted the registered mail package April 20, 2022. Therefore, I find the tenant was served on April 20, 2022, the date the tenant signed for and accepted the Notice of Hearing 2.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

As both parties included their email addresses the landlord was advised that the decision and any orders would be sent by email to the landlord for service on the tenant. The decision will be emailed to the tenant.

In addition to the above, the landlord stated that they do not wish to offset any amount owing with the tenant's security deposit as the tenant continues to reside in the rental unit and is required to provide their written forwarding address to the landlord.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

The landlord stated that a written tenancy agreement exists but was not submitted. The landlord testified that a month-to-month tenancy began on December 1, 2021. Monthly rent of \$2,300.00 is due on the first day of each month.

A copy of the 10 Day Notice was not submitted in evidence. As a result the landlord was asked to read from the 10 Day Notice before them. The landlord testified that the 10 Day Notice was dated February 9, 2022 and was served by SM posting the 10 Day Notice to the tenant's door. The landlord affirmed that the 10 Day Notice stated that \$1,030.00 was owed for February 2022 rent due February 1, 2022. The effective vacancy date is listed as February 19, 2022, which automatically corrects to February 22, 2022 under section 53 of the Act.

Although the tenant applied to dispute the 10 Day Notice, the tenant failed to attend the hearing to present the merits of their application. As a result, I find the 10 Day Notice is undisputed as the tenant must present the merits of their application to prove rent was paid versus not attending the hearing scheduled for them.

The landlord testified that the tenant owes \$7,930.00 in rent arrears as follows:

- A. February 2022, \$1,030.00 owing
- B. March 2022, \$2,300.00 owing
- C. April 2022, \$2,300.00 owing
- D. May 2022, \$2,300.00 owing

The landlord was advised that I find the tenant would be aware or ought to be aware that rent would become due on the first of each month in accordance with the tenancy agreement. Therefore, I permit the landlord to amend their application to \$7,930.00 as per section 64(3)(c) of the Act.

Analysis

Based on the undisputed testimony of the landlord, and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, as the tenant failed to attend the hearing, I find the 10 Day Notice was not disputed by the tenant. Furthermore, I accept the undisputed testimony of the landlord that the tenant was served with the 10 Day Notice and failed to pay any rent since and continues to occupy the rental unit. I have reviewed the description of the 10 Day Notice and find that it complies with section 52 of the Act and find that it is valid as a result. Given the above, I grant the landlord **\$7,930.00** in rent arrears as indicated above.

Order of Possession – Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on February 22, 2022, which was the corrected effective vacancy date as the 10 Day Notice is deemed served 3 days after it is posted to the tenant's door pursuant to section 90 of the Act.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. Given the above, I find the landlord's total monetary claim established is **\$8,030.00**, which is comprised of \$7,930.00 in unpaid rent plus the filing fee. I grant the landlord a monetary order for the amount owing by the tenant to the landlord of **\$8,030.00** pursuant to section 67 of the Act.

Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended February 22, 2022.

The landlord is granted a monetary order for the amount of \$8,030.00 as indicated above. This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlord only for service on the tenant. The tenant can be held liable for all costs related to enforcing both orders.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2022

Residential Tenancy Branch