



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RP, LAT, MNR-DR, OPR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order compelling the landlord to conduct repairs in the unit pursuant to section 32;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant’s guests pursuant to section 70.

While the landlord’s agent attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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 re-apply.

The landlord's agent gave sworn testimony that on February 24, 2022 copies of the Application for Dispute Resolution hearing package ('Application') and evidence was sent to the tenant by way of registered mail. The landlord provided Canada Post tracking information. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with copies of the landlords' application, notice of hearing, and evidence five days after mailing on March 1, 2022. The agent advised that he also slipped the notice of hearing, application, and documentary evidence under the tenants' door on the same day.

The agent provided undisputed testimony that the tenant was served with the 10 Day Notice, on January 28, 2022 by way of posting it on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 31, 2022, three days after posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent gave undisputed testimony regarding the following facts. The tenancy began on October 1, 2019, with monthly rent set at \$1200.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$600.00. The tenant continues to reside in the rental unit. The agent testified that the tenant failed to pay the rent for December 2021 and January 2022. On January 28, 2022 the agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant has not made any payments. The agent advised that as of this date, the tenant owes \$7200.00 in unpaid rent. The agent requests that amount, the recovery of the \$100.00 filing fee and an order of possession.

Analysis

Section 55(1) of the *Act* reads 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.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply. I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, February 10, 2022. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord's agent provided undisputed evidence that the tenant failed to pay the rent in full for the months of December 2021 through to May 2022. Therefore, I find that the landlord is entitled to \$7200.00 in arrears for the above period.

The landlord continues to hold the tenant's security deposit in the amount of \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

The landlord has established a claim for \$7300.00. I order that the landlord retain the \$600.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$6700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord is also granted an Order of Possession.

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

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 05, 2022

Residential Tenancy Branch