



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

The hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to section 46 and 55 of the Act;
- a Monetary Order for unpaid rent pursuant to section 55 of the Act;
- authorization to keep the Tenant's security deposit and/or pet damage deposit(s) pursuant to section 38; and
- authorization to recover the filing for the Application from the Tenant pursuant to section 72 of the Act.

The Tenant did not attend this hearing scheduled for 11:00 am. left the teleconference hearing connection open for the entire hearing, which ended at 11:13 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord's agent ("GC") attended the hearing and was 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 GC and I were the only ones who had called into this teleconference.

GC testified the Landlord served the NDRP and it's evidence ("NDRP Package") on the Tenant by registered mail on February 25, 2022. SH submitted provided the Canada Post tracking number for service of the NDRP Package on the Tenant to corroborate his testimony. I find that the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have been served with the NDRP Package on March 2, 2022, being five days after posting of the NDRP Package.

GC stated the Tenant did not serve any evidence on the Landlord for the hearing.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- recovery of the unpaid rent?
- Recovery of the filing fee of the 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.

GC testified the tenancy commenced on August 1, 2021, on a month-to-month basis, with rent of \$1,350.00 payable on the 1st day of each month. The Tenant was not required to pay a security deposit or pet damage deposit. GC stated the Tenant has not vacated the rental unit.

GC testified the Landlord served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated February 4, 2022 ("10 Day Notice") on the Tenant by registered mail on February 4, 2022. GC submitted a signed and witnessed Proof of Service on Form RTB-34 certifying service of the 10 Day Notice on the Tenant, together with the Canada Post tracking number. I find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act. GC stated the Landlord was unaware of the Tenant making an application for dispute resolution to dispute the 10 Day Notice.

GC testified that, as stated in the 10 Day Notice, the Tenant had rental arrears of \$4,050.00 as of February 1, 2022 which covered arrears for the period from December 2021 through February 2022 inclusive, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Dec-21	\$1,350.00	\$0.00	\$1,350.00
01-Jan-22	\$1,350.00	\$0.00	\$2,700.00
01-Feb-22	\$1,350.00	\$0.00	\$4,050.00
Total	\$4,050.00	\$0.00	\$4,050.00

Analysis

Section 26 of the Act states:

- 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.

The undisputed testimony GC was the Tenant is required to pay \$1,350.00 on the 1st day of each month. The undisputed testimony of GC is that the Tenant had rental arrears of \$4,050.00 from December 2021 through to February 2022 inclusive.

Subsection 46(4) of the Act states:

- 46(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.

The undisputed testimony of GC was the Landlord served the 10 Day Notice on the Tenant by registered mail on February 4, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on February 9, 2022. Pursuant to section 46(4) of the Act, the Tenant had until February 14, 2022, being 5-days after deemed receipt of the 10 Day Notice, to either pay the rental arrears or make an application for dispute resolution to dispute the 10 Day Notice. I find the Tenant did not pay the rental arrears stated on the 10 Day Notice within the five-day dispute period. GC stated the Landlord was unaware of the Tenant making an application for dispute resolution to dispute the 10 Day Notice.

Subsection 46(5) of the Act states:

- 46(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 in italics added]

Based on the undisputed testimony of GC, I find the monthly rent is \$1,150.00 per month and the Tenant had rental arrears of \$4,050.00 for the period December 2021 through to February 2022 inclusive. I find that the 10 Day Notice was issued for a valid reason. I find the Tenant did not make an application for dispute resolution to dispute the 10 Day Notice within 5 days of deemed service of the 10 Day Notice. As such, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being February 15, 2022.

I have reviewed the 10 Day Notice and find it complies with section 52 form and content requirements. Subsections 55(2), 55(3) and 55(4) of the Act 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.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

- (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.*

[emphasis added in italics]

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(1) of the Act, I order that the Tenant provide the Landlord with vacant possession of the rental unit.

The Tenant must compensate the Landlord \$4,050.00 for the unpaid rent. Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlord \$4,050.00 in satisfaction of the arrears. As noted above, the tenancy was conclusively deemed to have ended on February 15, 2022. Part B of Residential Tenancy Policy Guideline 3 ("PG 3") states:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

[emphasis in italics added]

Pursuant to PG 3, the Landlord has the option making an application for dispute resolution to seek compensation from the Tenants for overholding the rental unit after February 15, 2022.

As the Landlord has been successful in the Application, its application, he may recover her \$100.00 filing fee 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 Landlords within two days of being served with a copy of this decision and attached order by the Landlords. 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 to pay the Landlord \$4,150.00 calculated as follows:

Description	Amount
Rental Arrears	\$4,050.00
Filing Fee of Application	\$100.00
Total	\$4,150.00

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 13, 2022

Residential Tenancy Branch