



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-PP, MNRL, OPN, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the landlord applied on March 4, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent (with repayment plan) that was not paid in the required time, dated February 11, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent;
- an order of possession, the tenant having given written notice to end the tenancy; and
- the filing fee.

On May 27, 2022, the landlord amended their application to reduce the amount sought for unpaid rent to \$5,184.20.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified that the Notice of Dispute Resolution Proceeding (NDRP) and his evidence were served on the tenant by registered mail on March 11, 2022, and that additional evidence was served on the tenant by registered mail on May 27, 2022 and by posting it to the door the same day. The tenant confirmed receipt of the landlord's documents.

Preliminary Matter

Because both parties agreed the tenant did not give written notice to end the tenancy, and the landlord confirmed their related claim was made in error, I dismiss, without leave to reapply, the landlord's claim for an order of possession, the tenant having given written notice to end the tenancy.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered all the evidence before me, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my related findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began November 1, 2016, rent is due on the first of the month, the tenant did not pay a security deposit or pet damage deposit, and the tenant still resides in the rental unit.

The landlord testified that rent is \$517.00 a month; the tenant testified that rent is \$568.00 a month. The landlord submitted that rent has been \$517.00 since June 1, 2020, and that the tenant has been on a repayment plan of \$50.00 a month since getting behind in rent prior to the beginning of the pandemic. The rent payment of \$517.00 plus the repayment amount of \$50.00 come to \$567.00.

The landlord testified the 10 Day Notice was served on the tenant by attaching it to the door on February 12, 2022. The tenant testified she received the Notice, though much later, on an unknown date.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$4,616.51, due on February 1, 2022.

The tenant testified she did not dispute the 10 Day Notice as she did not know how.

The landlord testified that there have been many months the tenant did not pay rent, and that as of May 26, 2022, the tenant owed \$3,735.51 in unpaid rent, and \$1,448.69 from the most recent repayment plan (totalling \$5,184.20). When I asked the tenant if she agreed with these amounts, she said that she has “no clue” and that she pays once a month.

The landlord testified that when the tenant makes a payment, it is applied to the oldest amount owing, and as the tenant is paying some but not all of the rent and repayment installments, the amount owing increases, until another repayment agreement is arranged, with the current rent arrears and the outstanding amount from the previous repayment agreement being rolled into the new repayment agreement.

The landlord testified that the tenant agreed to the repayment plans; when I asked the tenant if she agreed to the repayment plans, she said she was not sure.

The landlord submitted as evidence financial records in support of their claim, including:

- a Monthly Rent Payment Report, which notes that rent is \$517.00 and the overdue rent as of May 26, 2022 is \$3,735.50;
- a Repayment Report, which notes this is the fifth repayment agreement and that the arrears in the repayment agreement as of May 26, 2022 is \$1,448.69; and
- a Tenant Payment Record, which is a summary of the tenant's payments, and notes the date of the payment, the amount of the payment, and what the payment was applied to – the amounts applied to back rent and the repayment plan, respectively. The document notes irregular tenant payments of varying amounts.

The parties agreed that the tenant paid rent for June 2022.

The tenant testified she pays rent each month by making an online payment from her bank. The tenant submitted she never forgets to pay her rent, then stated that maybe there was one month when she did not pay rent, when her neighbour took money out of her account. The tenant testified that a man took all her money out of her bank account on an unspecified date. The tenant did not submit documentary evidence in support of her claim that she pays rent each month.

The landlord testified that the tenant had claimed that someone had taken her bank card. The landlord testified they had multiple meetings with the tenant regarding the issue, the tenant did not request police involvement, and did not follow through on the landlord's offer to connect the tenant with a financial trustee. The landlord testified they exhausted their options to assist the tenant.

The landlord testified they are seeking an order of possession for the end of July 2022.

Analysis

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Instructions on how to dispute a 10 Day Notice are provided at the top of page 1 of the Notice, as follows:

<p>Tenant: This is a legal notice that could lead to you being evicted from your home</p> <p>HOW TO DISPUTE THIS NOTICE</p> <p>You have 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.</p>

I find the landlord served the 10 Day Notice on the tenant by attaching it to the door on February 12, 2022, in accordance with section 88 of the Act, and deem the Notice received by the tenant on February 15, 2022, in accordance with section 90 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

I find that the tenant has failed to file an application for dispute resolution within 5 days of February 15, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, February 25, 2022, and must vacate the rental unit.

In accordance with section 46 of the Act, I find the landlord is entitled to an order of possession.

As the tenant testified that she still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, June 17, 2022.

Considering the landlord's claim for a monetary order for \$5,184.20 in unpaid rent, I accept the landlord's affirmed testimony, supported by the financial records submitted as evidence and explained to me in the hearing, that the tenant got behind in rent, a repayment plan was agreed to, and that the tenant continued to miss or make incomplete rent payments and repayment installments, such that the parties agreed to

enter into subsequent repayment plans, and that the tenant's pattern of missing or incomplete payments continues.

I found the landlord organized, credible, and able to walk me through the various financial documents, and answer my related questions.

The tenant has provided no evidence to support her claim that she pays rent every month.

I find, on a balance of probabilities, the landlord has proven their claim that the tenant owes \$5,184.20 in unpaid rent.

Therefore, I find the landlord is entitled to a monetary award for \$5,184.20, in accordance with section 67 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

I find the landlord is entitled to a monetary order as follows:

Outstanding rent	\$5,184.20
Filing fee	\$100.00
Owed to landlord	\$5,284.20

Conclusion

The landlord's application is granted.

The landlord is granted an order of possession which will be effective at 1:00 p.m. on July 31, 2022.

The landlord is granted a monetary order in the amount of \$5,284.20.

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: June 28, 2022

Residential Tenancy Branch