



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU, OPC, MNRL-S, FFL**

Introduction

This 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 for non-payment of rent pursuant to sections 46 and 55;
- an Order of Possession for cause pursuant to section 47 and 55;
- a Monetary Order for unpaid rent and/or utilities pursuant to section 67; and
- authorization to recover the filing fee of the Application from the Tenant.

The Landlord, the Landlord's agent ("MS"), the Landlord's advocate ("SC") and the Tenant attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Landlord stated the Notice of Dispute Resolution Proceeding and some of her evidence ("NDRP Package") was served on the Tenant by registered mail on March 11, 2022. The Landlord provided the Canada Post tracking number for service of the NDRP Package on the Tenant. The Tenant acknowledged receipt of the NDRP Package. I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Late Service of Evidence by the Landlord

The Landlord stated she served additional evidence on the Tenant on March 25, 2022. Rules 3.14 and 3.17 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") reads in part as follows:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office *not less than 14 days before the hearing*. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above *provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice*. Both parties must have the opportunity to be heard on the question of accepting late evidence.

[italics added]

The Landlord made her application for dispute resolution on February 28, 2022. Accordingly, the Landlord had more than 3 months to submit her evidence and ensure that it was served on the Tenant and filed with the Residential Tenancy Branch ("RTB") at least 14 clear days before the hearing. The Landlord did not provide me with a reasonable explanation for service on the Tenant less than 14 days prior to this hearing. As the Landlord did not comply with Rule 3.14, and as it could not be considered new and relevant evidence pursuant to Rule 3.17, I find that the Landlord's additional evidence submitted less than 14 days prior to the hearing is not admissible for this hearing.

Preliminary Matter – Late Service of Evidence by the Tenant

The Tenant stated he filed his evidence with the RTB on June 1, 2022 and served it on the Landlord on June 2, 2022. Rule 3.15 of the RoP states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, *the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.* See also Rules 3.7 and 3.10.

[italics added]

The Tenant did not provide me with a reasonable explanation for service on the Landlord less than 7 days prior to this hearing. As the Tenant did not comply with Rule 3.15, and as it could not be considered new and relevant evidence pursuant to Rule 3.17, I find that the Tenant's evidence is not admissible for this hearing.

Preliminary Matter – Amendment of to Increase Landlord's Claim for Rental Arrears

At the commencement of the hearing the Landlord stated that the Tenant has additional rental arrears of \$2,500.00 that have accrued for the month of March 2022. The Landlord stated she is now seeking rental arrears of \$5,000.00 for the months of February and March 2022 inclusive. The Landlord requested that I amend the Application to make a claim for \$5,000.00 in rental arrears.

Rule of Procedure 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Tenant did not vacate the rental unit until March 31, 2022, I find a claim for recovery by the Landlord for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenant. Based on the above, I order that the Application be amended to claim \$5,000.00 for rental arrears pursuant to Rule 4.2.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for non-payment of rent?
- an Order of Possession for cause?
- a Monetary Order for unpaid rent and/or utilities?
- authorization to recover the filing fee for 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.

The Landlord and Tenant agreed the tenancy commenced on July 1, 2019, for a fixed term ending June 30, 2020, with rent of \$2,500.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 by June 30, 2019. The Landlord confirmed the Tenant paid the security and pet damage deposits and that she was holding the deposits in

trust on behalf of the Tenant. I find there was a tenancy for the rental unit between the Landlord and Tenant.

The Landlord stated a Ten Day Notice for Unpaid Rent and/or Utilities dated February 5, 2022 ("10 Day Notice") was served by MS on the Tenant in-person on February 6, 2022. The Tenant acknowledged receipt of the 10 Day Notice. I find the 10 Day Notice was served on the Tenant pursuant to section 88 of the Act.

The Landlord stated a One Month Notice to End Tenancy for Cause dated February 7, 2022 ("1 Month Notice") was served by MS on the Tenant in-person on February 8, 2022. The Tenant acknowledged receipt of the 1 Month Notice. I find the 1 Month Notice was served on the Tenant pursuant to section 88 of the Act.

The Tenant stated he did not dispute either the 10 Day Notice or the 1 Month Notice. The Tenant stated he vacated the rental unit on March 31, 2022 being the effective date of the 1 Month Notice. The Landlord stated she was not aware the Tenant vacated the rental unit until April 4, 2022.

The Landlord stated that the Tenant had rental arrears of \$2,500.00 as of February 1, 2022. The Landlord also stated the Tenant owed \$60.00 for utilities as of February 1, 2022. As noted above, the Landlord testified the Tenant did not pay the rent for March 2022 and the Tenant had total rental arrears of \$5,000.00 as of the date he vacated the rental unit on March 31, 2022 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Feb-22	\$2,500.00	\$0.00	\$2,500.00
01-Mar-22	\$2,500.00	\$0.00	\$5,000.00
Total	\$5,000.00	\$0.00	\$5,000.00

I noted the tenancy agreement did not require the Tenant pay the Landlord for any utilities. As such, the Landlord was not entitled to make a claim for unpaid utilities. The Landlord also claimed the Tenant owed her for rental charges for a storage locker that the Tenant rented from the strata corporation in which the rental unit was located. I noted that the storage agreement was separate from the tenancy agreement and, therefore, the Landlord was not entitled to make a monetary claim under the Act for any amounts that may be owing pursuant to a storage agreement made by the Tenant with the strata corporation.

The Tenant admitted he did not pay the rent for February and March 2022 and that he owed the Landlord \$5,000.00 for rental arrears.

Analysis

1. Landlord's Claim for Order of Possession

Sections 46(1) through 46(5) of the Act state:

- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (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.
- (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 added in italics]

The Landlord stated the Tenant was served with the 10 Day Notice in-person on February 6, 2022. Pursuant to section 46(4), the Tenant had until February 11, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. The Tenant admitted he did not dispute the 10 Day Notice. Pursuant to section 46(5), the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, being February 15, 2022.

Subsections 47(4) and 47(5) of the Act state:

- 47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not 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 by that date.

[emphasis added in italics]

The Landlord stated the Tenant was served with the 1 Month Notice in-person on February 7, 2022. Pursuant to section 46(4), the Tenant had until February 17, 2022, to make an application for dispute resolution to dispute the 1 Month Notice. The Tenant admitted he did not dispute the 1 Month Notice. Pursuant to section 47(5), the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, being March 31, 2022. The Tenant stated he vacated the rental unit on March 31, 2022.

The Landlord stated the Tenant had rental arrears of \$5,000.00 for February and March 2022. The Tenant admitted he owed the Landlord rent for the months of February and March 2022 inclusive. As such, I find the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52 of the Act. As the Tenant has already vacated the rental unit, it is no longer necessary for me to consider whether the Landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act. Furthermore, as the Tenant has vacated the rental unit, it is unnecessary for me to determine whether the Landlord had cause to end the tenancy pursuant to the 1 Month Notice.

2. Landlord's Claim for Unpaid Rent

Subsection 26(1) 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.

Based on the testimony of the Landlord and Tenant, I am satisfied the Tenant has rental arrears of \$5,000.00 for February and March 2022. Pursuant to section 55(4)(b), I order the Tenant pay the Landlord \$5,000.00 in satisfaction of the rental arrears owed. Pursuant to section 72(2)(b), the Landlord may deduct the Tenant's security deposit of \$2,500.00 from the rental arrears owed by the Tenant, leaving a balance of \$2,500.00.

3. Landlord's Claim for Filing Fee

As the Landlord has been substantially successful in her claims, I find the Landlord is entitled to recover the \$100.00 filing fee for the Application pursuant to section 72(1) of the Act.

Conclusion

I order the Tenant pay the Landlord \$5,725.00, representing the following:

Description	Amount
Rental Arrears for February and March 2022 inclusive	\$5,000.00
Landlord's Filing Fee for Application	\$100.00
Less Tenant's Security Deposit	-2,500.00
Total	\$2,600.00

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: June 9, 2022

Residential Tenancy Branch