



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR-DR OPN OPC MNDL MNR-DR FFL
For the tenant: CNR

Introduction

This hearing was convened as a result an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) by both parties. The landlord applied for an order of possession based on a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 16, 2022 (10 Day Notice), based on the tenant providing notice to vacate and based on a 1 Month Notice to End Tenancy for Cause (1 Month Notice) and for a monetary order unpaid rent or utilities, for authorization to keep all or part of the security deposit, for damages to the unit, site or property, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice.

The landlord and the spouse of the landlord, GK (spouse) attended the teleconference hearing and were affirmed. The tenant did not attend the hearing at the required start time and after the mandatory 10-minute waiting period had elapsed pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rules 7.1, 7.3 and 7.4 the tenant's application was **dismissed, without leave to reapply**. The hearing continued with consideration of the tenant's application. While the tenant and their son, PW (son) called into the hearing late at 28 minutes as the hearing was concluding, by that time the tenant's application had already been dismissed without leave to reapply.

The landlord and their spouse gave affirmed testimony, were provided the opportunity to present their relevant evidence in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant failed to attend until the hearing concluded at 28 minutes, the spouse testified that the tenant was served with the two applications by the landlord by registered mail. Two registered mail tracking numbers were provided, which have been included on the cover page of this decision for ease of reference.

I have reviewed all evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The landlord confirmed their email address and were advised that the decision and any applicable orders would be emailed to the landlord. The decision will also be emailed to the tenant at the email address provided in their application.

The spouse testified that in addition to the rent owed as claimed in the original application, the tenant has subsequently not paid any rent since February 2022. As a result, the landlord requested to amend their application to include rent owed until June 2022 as the tenant continues to occupy the rental unit as of the date of the hearing, June 14, 2022. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, \$16,503.00, before the filing fee.

The spouse also confirmed that due to the tenant continuing to occupy the rental unit, the landlord does not want to offset the security deposit as the tenant must still provide their written forwarding address once they vacate. As a result, I will not offset the tenant's security deposit.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the two filing fees under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2020 and converted to a month-to-month tenancy after August 1, 2020. The monthly rent is \$3,390.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$1,645.00 at the start of the tenancy, which the landlord continues to hold and has accrued no interest to date under the Act.

The landlord's monetary claim of \$16,530.00 is comprised of the following:

Item 1	Unpaid portion of 2021 rent	\$1,785.00
Item 2	Unpaid portion of February 2022 rent	\$1,158.00
Item 3	Unpaid March 2022 rent	\$3,390.00
Item 4	Unpaid April 2022 rent	\$3,390.00
Item 5	Unpaid May 2022 rent	\$3,390.00
Item 5	Unpaid June 2022 rent	\$3,390.00
TOTAL		\$16,530.00

Regarding the 10 Day Notice, the landlord and spouse testified that the 10 Day Notice was served on March 16, 2022 at 9:19 a.m. by placing in the mailbox of the tenant. Although the tenant filed on March 1, 2022 to dispute an earlier 10 Day Notice dated March 1, 2022, the tenant did not submit an application to cancel the 10 Day Notice dated March 16, 2022, which is the 10 Day Notice before me submitted by the landlord.

Section 90 of the Act states that documents served by posting in the mailbox are deemed served 3 days later, which I will address later in this decision. The spouse and landlord confirmed that as of the date of the hearing, June 14, 2022, the tenant owes a total of \$16,503.00 in unpaid rent as noted above and has not paid towards any rent amount since February 2022.

The landlord and spouse confirmed that the \$6,333.00 amount owing as March 1, 2022 was not paid and that the tenant continues to occupy the rental unit without paying rent. The landlord is seeking a 2-day Order of Possession, a monetary order for unpaid rent and the filing fees.

Analysis

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

Order of possession – Pursuant to section 55(1) as I have dismissed the tenant's application and find that the 10 Day Notice complies with section 52 of the Act, I must grant the landlord an order of possession. Section 90 of the Act deems that documents are served 3 days after they are placed in a mailbox. Therefore, I find the tenant was deemed served with the 10 Day Notice on March 19, 2022 and failed to dispute the 10 Day Notice or pay any rent indicated as owing since being served with the 10 Day Notice dated March 16, 2022. Therefore, I find the tenancy ended on **March 29, 2022**, which was the effective vacancy date listed on the 10 Day Notice. I grant the landlord an order of possession **effective two (2) days after service on the tenant**.

Monetary claim – I accept the landlord's undisputed testimony that the tenant continues to occupy the rental unit and owes a total of **\$16,530.00** in rent arrears as claimed. Therefore, I find the tenant breached section 26 of the Act that requires that \$3,390.00 in rent be paid on the first day of each month.

As the landlord's application is fully successful, I grant the landlord the **\$200.00** for both filing fees pursuant to section 72 of the Act for a total amount owing by the tenant to the landlord of **\$16,703.00**.

In addition to the above, I find the 10 Day Notice was undisputed by the tenant as the tenant failed to attend the hearing to dispute the 10 Day Notice and continues to occupy the rental unit.

I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$16,703.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenant not to breach section 26 of the Act in the future and that they can be held liable for all costs related to enforcing the order of possession and monetary order.

Conclusion

The tenant's application was dismissed in full, without leave to reapply as the tenant did not attend the hearing to present the merits of their application.

The landlord's application is fully successful. The tenancy ended on March 29, 2022. The landlord has been granted an order of possession effective two (2) days after service on the tenant. Should the landlord require enforcement of the order of possession, the landlord must first serve the tenant with the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord has established a total monetary claim of \$16,703.00 and has been granted a monetary order pursuant to section 67 of the Act in that amount. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The orders will be emailed to the landlord only for service on the tenant as required.

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: June 14, 2022

Residential Tenancy Branch