



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on April 19, 2022 (the “10-Day Notice”);
- A monetary order for unpaid rent pursuant to s. 67; and
- Return of their filing fee pursuant to s. 72.

X.Z. and Y.Y. appeared as the Landlord. L.Y. appeared as agent for the Landlord (the “Agent”). M.K. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Agent advised that the Landlord’s application materials were personally served on the Tenant, though could not recall the specific date. The Tenant acknowledges receipt of the Landlord’s application materials sometime in late May 2022. I find that the Landlord served the Tenant with their application materials in accordance with s. 89 of the *Act*, as acknowledged by the Tenant at the hearing.

Issues to be Decided

- 1) Is the Landlord entitled to an order for possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The tenants moved into the rental unit on October 1, 2017.
- Rent of \$922.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$450.00 in trust for the tenants.

A copy of the first and second page of the tenancy agreement were put into evidence by the Landlord. The tenancy agreement indicates that the security deposit was paid in the amount of \$425.00.

The Agent advised that the 10-Day Notice was personally served on the Tenant, though he could not recall the specific date. The Tenant acknowledges receiving the 10-Day Notice on or about April 19, 2022. The 10-Day Notice was put into evidence by the Landlord and lists that \$1,622.00 was owed when it was issued (\$700.00 for March 2022 and \$922.00 for April 2022). The Tenant acknowledged that \$1,622.00 was owed when the 10-Day Notice was issued.

The Agent advised that the arrears listed in the 10-Day Notice has been paid, though indicates that rent has not been paid for June 2022. The Tenant confirms that she paid the arrears and acknowledges that rent for June 2022 has not been paid.

The Tenant confirmed that she did not pay the arrears of \$1,622.00 within 5 days of receiving the 10-Day Notice and that she did not file an application to dispute the 10-Day Notice. The Tenant indicates that she paid \$922.00 sometime in mid-May and another \$922.00 in late-May. The Tenant argued that she overpaid based on the arrears listed within the 10-Day Notice.

The Tenant further argued that she paid out of pocket for repairs to the rental unit. The first payment relates to cleaning from the septic tank, which was paid by the Tenant in the amount of \$270.00 in March 2022. The second payment related to emergency plumbing repairs, which was paid by the Tenant in the amount of \$310.13 on May 28, 2022. The invoices were not put into evidence and the Tenant admitted at the hearing that she did not contact the Landlord with respect to these repairs prior to paying for

them nor did she send the invoices to the Landlord, only doing so during the hearing itself.

The Agent confirmed that they had no knowledge of the repairs as they had not been contacted by the Tenant nor did they receive the invoices. The Tenant argued that they understood the Agent to no longer working for the Landlord and that they cannot communicate with the Landlord as there is a language barrier.

The Tenant confirmed she and her co-tenant continue to reside within the rental unit.

Analysis

The Landlord seeks an order for possession and an order for unpaid rent.

As a preliminary issue, I note that the Landlord filed their application on May 9, 2022 and the hearing took place on June 20, 2022. In their application, the Landlord seeks an order for unpaid rent in the amount of \$1,844.00 for April and May rent and that the \$700.00 owed for March had been paid.

Rule 4.2 of the Rules of Procedure allows for applications to be amended at the hearing in circumstances that can be reasonably anticipated and provides the specific example of when the amount of rent owing has increased since the application was made. I find that this has occurred and that it would be appropriate to amend the Landlord's claim to include any outstanding rent for June 2022 as such an increase could reasonably be anticipated given the passage of time. Accordingly, their claim is amended to include unpaid rent, if any, from June 2022.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

In this instance, the Tenant acknowledges receiving the 10-Day Notice on or about April 19, 2022. Neither party was able to provide specific information on when the 10-Day Notice was served or received. However, I place significant weight on the Tenant's acknowledgement that it was received on or about April 19, 2022. Accordingly, I find that pursuant to s. 71(2) of the *Act* that the 10-Day Notice was sufficiently served on the Tenant as acknowledge by her at the hearing. I further find that the 10-Day Notice was received on April 19, 2022, as stated by the Tenant at the hearing.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

When a 10-Day Notice to End Tenancy issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

HOW TO DISPUTE THIS NOTICE

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.

In this case, the Tenant admitted at the hearing that she neither disputed nor paid the total outstanding arrears within 5-days of receiving the 10-Day Notice. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is April 30, 2022, as listed within the 10-Day Notice.

As the 10-Day Notice complies with s. 52 and the Tenant is conclusively presumed to have accepted the end of the tenancy under s. 46(5), I find that the Landlord is entitled to an order for possession pursuant to s. 55. The tenants shall give vacant possession of the rental unit to the Landlord.

With respect to the issue of unpaid rent, there is little dispute that rent for June 2022 has not been paid. The Tenant argued that she overpaid rent based on the two payments of \$922.00 she made in May 2022. However, this does not account for the \$700.00 arrears for March 2022, which she did acknowledge was owed. The Landlord indicates that the \$700.00 had been paid, a fact acknowledged within their Notice of Dispute Resolution, which would presumably have been paid between the 10-Day Notice being issued and filing their application on May 9, 2022. Based on the payment of \$700.00 (March 2022 arrears), \$922.00 paid mid-May 2022 (April arrears), and \$922.00 paid late-May 2022 (May rent), rent was up to date at the end of May 31, 2022. Accordingly,

the amount owed is \$922.00 based on rent due on June 1, 2022, which the Tenant acknowledged had not been paid.

The Tenant argued that she is out of pocket for the cost of repairs. Under s. 33(7) of the *Act*, a tenant may deduct the cost of emergency repairs they have paid for from rent where the landlord failed to undertake the repairs after the tenant attempted to advise them of the issue on at least two occasions. Here, the Tenant admits that she did not contact the Landlord with respect to the repairs. She further indicates that she sent the invoices for these amounts during the hearing itself. Assuming that the repairs qualified as “emergency repairs” under s. 33, which I do not have sufficient information to make a finding, the Tenant was not entitled to undertake the repairs as per s. 33(3) and was thus not entitled to deduct rent under s. 33(7). Accordingly, the two amounts claimed by the Tenant are not relevant to my analysis on what unpaid rent was owed.

I find that the tenants breached their obligation to pay rent as per the tenancy agreement. I find that the Landlord suffered a financial loss that could not have been mitigated under the circumstances as the tenants continue to reside within the rental unit. I further find that the Landlord has established a monetary order for unpaid rent in the amount of \$922.00, representing unpaid rent for June 2022. The Landlord shall have a monetary order in this amount.

I find that the security deposit is \$450.00 as acknowledged by both parties at the hearing rather than the \$425.00 as listed within the tenancy agreement. I prefer the parties’ oral testimony over the tenancy agreement due to the parties confirmation of this amount during the hearing. I direct that the Landlord retain the security deposit of \$450.00 in partial satisfaction of the amount owed by the tenants.

Conclusion

The Landlord is entitled to an order for possession. Pursuant to s. 55, I order that the Tenants provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order for possession.

The Landlord has established a monetary claim for unpaid rent in the amount of \$922.00.

As the Landlord was successful in their application, I find they are entitled to the return of their filing fee. Pursuant to s. 72 of the *Act*, I order that the Tenants pay the Landlord's \$100.00 filing fee.

I make a total monetary order taking the following into account:

Item	Amount
Unpaid rent	\$922.00
Filing fee pursuant to s. 72(1)	\$100.00
Less security deposit to be retained by the Landlord as per s. 72(2)	-\$450.00
Total	\$572.00

Pursuant to ss. 67 and 72, I order that the Tenants pay **\$572.00** to the Landlord.

It is the Landlord's obligation to serve the monetary order and the order for possession on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that 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 20, 2022

Residential Tenancy Branch