



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FRASER PROPERTY MANAGEMENT REALTY SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice on February 11, 2022 by posting the notice on the Tenant's door. The Landlord subsequently served the 10 Day Notice via Canada Post registered mail on March 9, 2022. The Landlord provided the Canada Post registered mail tracking number as proof of service. I noted the registered

mail tracking number on the cover sheet of this decision. I find that the 10 Day Notice was deemed served on the Tenant on March 14, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord testified that he served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN on April 1, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord referred me to the Canada Post registered mail receipt with tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on April 6, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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. On this basis, I accept the Landlord's request to amend their original application from \$5,400.00 to \$12,600.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord stated that this periodic tenancy began on April 15, 2021. Monthly rent is \$1,800.00 payable on the first day of each month. A security deposit of \$900.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$5,400.00 in outstanding rent on February 1, 2022. The effective date of the 10 Day Notice was February 21, 2022.

The Landlord testified that the Tenant has only paid rent in '*dribs and drabs*' for some time. The Landlord maintained that the history of rent payments since service of the 10 Day Notice is as follows:

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
February 2022 10 Day Notice			\$5,400.00
March 2022	\$1,800.00	\$0.00	\$7,200.00
March 8, 2022		\$800.00	\$6,400.00
April 2022	\$1,800.00	\$0.00	\$8,200.00
May 2022	\$1,800.00	\$0.00	\$10,000.00
May 3, 2022		\$1,000.00	\$9,000.00
June 2022	\$1,800.00	\$0.00	\$10,800.00
July 2022	\$1,800.00	\$0.00	\$12,600.00

The Landlord stated that the Tenant does not have permission from the Landlord to withhold rent, and the Tenant has not received an Order from an Arbitrator authorizing him to withhold rent. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$12,600.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

- 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].*
- ...
- (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.*
- ...

The Landlord's 10 Day Notice was deemed served on the Tenant on March 14, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Based on the undisputed testimony of the Landlord, the Tenant is still in rental arrears in this tenancy, he does not have permission from the Landlord to withhold rent and the Tenant does not have an Arbitrator's Order to withhold rent. I find the Tenant did not dispute the 10 Day Notice and is conclusively presumed to have accepted that the tenancy ended on February 21, 2022. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55(1.1) of the Act reads as follows:

Order of possession for the landlord

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:*

...

(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;*

...

(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.*

I previously found that the Tenant did not apply to dispute the 10 Day Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective two (2) days after service on the Tenant. The Landlord is also entitled to a Monetary Order for non-payment of rent pursuant to Section 55(4)(b) of the Act. The total outstanding rent amount is \$12,600.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$12,600.00
Less security deposit:	-\$900.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$11,800.00

Conclusion

The Landlord's 10 Day Notice is upheld, and I grant an Order of Possession to the Landlord effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$11,800.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 Act.

Dated: July 15, 2022

Residential Tenancy Branch