



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL (Repeated)**

Introduction

This hearing dealt with the Landlord's repeat applications 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. The Tenant attended about 10 minutes into the hearing time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant acknowledged receipt of:

- Two of the Landlord's 10 Day Notices, one served personally on March 4, 2022, and one served via registered mail on April 6, 2022 (deemed served on April 11, 2022); and,
- Both of the Landlord's Notice of Dispute Resolution Proceeding packages, the first served by registered mail on March 16, 2022 (deemed served on March 21,

2022); and the second one served by registered mail on May 5, 2022 (deemed served on May 10, 2022).

All Canada Post Tracking Numbers are recorded on the cover page of this decision. Pursuant to Sections 88, 89 and 90 of the Act, I find that the Tenant was duly served with all documents related to the hearing in accordance with 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 evidence to amend his original application from \$1,100.00 to \$11,000.00 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 the 10 Day Notices?
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 parties confirmed that this tenancy began as a fixed term tenancy on November 1, 2021, although the Tenant stated she first moved into the rental unit on April 15, 2021. The fixed term ended on February 1, 2022, then the tenancy continued on a month-to-month basis. The tenancy agreement sets out that the monthly rent is \$2,200.00 payable on the 15th day of each month. The Landlord stated that the Tenants told him it was easier for them to pay \$1,100.00 on the 1st of the month, then the remaining portion on the 15th of the month. The Landlord was fine with this situation. A security deposit of

\$1,100.00 was collected at the start of the tenancy. One of the original tenants moved out of the rental unit on November 1, 2021 and requested his half of the security deposit returned to him. The Landlord returned \$550.00 to this tenant. The Landlord still holds \$550.00 in trust for the Tenant in this matter.

The reason in the first 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$1,100.00 in outstanding rent on March 1, 2022. The effective date of the first 10 Day Notice was March 18, 2022.

The reason in the second 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$3,300.00 in outstanding rent on March 15, 2022. The effective date of the second 10 Day Notice was April 21, 2022.

The Landlord testified that the last time he received a rental payment from the Tenant was for \$100.00 on February 22, 2022. The outstanding rent amount is now \$11,000.00.

The parties confirmed 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 her to withhold rent.

The Tenant stated she has sent the Landlord cash via regular; however, the Landlord did not acknowledge its receipt. The Tenant also stated that she acquired a roommate who was supposed to pay half of each month's rent, but this roommate has not paid her share of the rent. The Tenant said she disputed the second 10 Day Notice, but because she did not have the \$100.00 to pay the application filing fee, her dispute resolution application did not go through.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$11,000.00.

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.

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].*

...

(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.

...

The Tenant confirmed service of the first 10 Day Notice on March 4, 2022, and she was deemed served with the second 10 Day Notice on April 11, 2022. I find that both 10 Day Notices complied with the form and content requirements of Section 52 of the Act. The Tenant did not apply for dispute resolution on either of the 10 Day Notices. Both parties also confirmed that the Landlord had not given the Tenant permission to withhold rent, and the Tenant had not received an Arbitrator's Order authorizing her to withhold rent. Consequently, pursuant to Section 46(5)(a) of the Act, she is conclusively presumed to have accepted that the tenancy ended on the effective dates of the notices. I uphold the Landlord's 10 Day Notices.

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

Order of possession for the landlord

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) *the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*
- (1.1) *If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

The Landlord's 10 Day Notices complied with Section 52 of the Act, and I have upheld the Landlord's 10 Day Notices. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant. The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$11,000.00. 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. Since the Landlord was successful in his claims, I grant him recovery of two application filing fees pursuant to Section 72(1) of the Act. The Landlord's Monetary award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$11,000.00
Less security deposit:	-\$550.00
Plus application filing fees:	\$200.00
TOTAL OWING:	\$10,650.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$10,650.00. 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 18, 2022

Residential Tenancy Branch