



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR

Introduction

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

- An order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on February 7, 2022 (the “10-Day Notice”); and
- An order for unpaid rent pursuant to s. 67.

The Landlord’s application was filed as a direct request but was adjourned to a participatory hearing following the decision of the adjudicator dated March 29, 2022.

C.C. appeared as agent for the Landlord (the “Agent”). He was joined by his assistant, Y.H..

The Tenant did not attend the hearing, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

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 10-Day Notice was posted to the Tenant’s door on February 8, 2022. The Landlord provides a photograph of the 10-Day Notice posted to the door. I find that the Landlord served the 10-Day Notice in accordance with s. 88 of the *Act* by having it posted to the Tenant’s door on February 8, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on February 11, 2022.

The Agent further advised that the Landlord's application, evidence, and the decision of the adjudicator were served on the Tenant by way of registered mail sent on March 30, 2022. The Landlord provides a copy of the registered mail tracking receipt. I find that application materials for the participatory hearing were served on the Tenant in accordance with s. 89 of the *Act* by way of registered mail sent on March 30, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's application materials for the participatory hearing on April 4, 2022.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?

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 Agent confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on November 1, 2019.
- Rent of \$659.75 is due on the first day of each month.
- The current rent payable is subject to a rent increase that took effect on January 1, 2022 and that monthly rent payable before that date was due in the amount of \$650.00.

A copy of the tenancy agreement was put into evidence. The tenancy agreement does not list the Landlord's name. The Agent advised that the corporate Landlord, as listed in the Notice of Dispute Resolution and the 10-Day Notice, has been acting as agent of the owner for the past year. It was acknowledged that the previous manager made an error with respect to the tenancy agreement by failing to list the Landlord.

The Agent advised that the Landlord had previously issued a 10-Day Notice in this matter and that that matter came on for hearing in September 2021. The Agent provided the file number for that matter, which indicates the parties had settled their previous dispute and that the Tenant was to pay off previous arrears by December 16, 2021. An

order of possession was granted as part of that settlement, though it was issued on a conditional basis and would expire on December 16, 2021.

The Agent advised that the Tenant failed to pay rent due for December 2021 in full and made a partial payment of \$109.75. The Agent further advised that rent was not paid at all on January 1, 2022 or February 1, 2022. The 10-Day Notice, which was put into evidence, was issued on the basis of a claim of unpaid rent in the amount of \$1,859.75 being due on February 1, 2022.

The Agent advised that the Tenant has made no rent payment since the 10-Day Notice was served and that he is unaware of any application filed by the Tenant disputing the 10-Day Notice. The Agent advises that the Landlord seeks unpaid rent as listed in the 10-Day Notice and from March 2022 until June 2022. The Agent specifically states that the Landlord does not seek unpaid rent for July 2022.

The Agent confirmed the Tenant continues to reside within the rental unit.

Analysis

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

As a preliminary note, I have reviewed the parties previous settlement agreement. I find that it does not prejudice or prevent the Landlord from issuing the 10-Day Notice when they did nor does it prevent them advancing their present claim.

Further, I accept the undisputed testimony of the Agent that the Landlord is acting as agent for the owner and I find that it falls within the definition of "landlord" as set out under s. 1 of the *Act*.

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.

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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date set out in the 10-Day Notice is listed as February 18, 2022.

However, as it was deemed to have been received on February 11, 2022, the effective date is automatically corrected to February 21, 2022 by s. 53 of the *Act*.

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.

I accept the undisputed testimony of the Agent and find that the Tenant neither paid the overdue amount nor did he file an application disputing 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 February 21, 2022.

As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

I note the Landlord filed its claim in February 2022. I permit it to amend its claim to seek the additional amounts since filing as specifically permitted under Rule 4.2 of the Rules of Procedure. I find that the increased claim was reasonably anticipated given the passage of time. I do not include the month of July 2022 as requested by the Agent at the hearing.

I accept the undisputed testimony of the Agent and find that rent was not paid in accordance with the tenancy agreement, that the Tenant had no lawful reason for withholding rent from the Landlord, and that the Tenant has no lawful reason to continue to occupy the rental unit since he is conclusively presumed to have accepted the end of the tenancy. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I note that the Tenant has been overholding since February 21, 2022. I draw no distinction between rent due under the tenancy agreement and any claim for compensation in lieu of rent for the period in which the Tenant was overholding. Both give rise to the same monetary claim and result from direct breaches of the tenancy agreement and the *Act*.

I accept the undisputed evidence of the Agent that the rent was not paid as follows:

Month	Rent Due	Rent Paid	Difference
December 2021	\$650.00	\$109.75	-\$540.25
January 2022	\$659.75	\$0.00	-\$659.75
February 2022	\$659.75	\$0.00	-\$659.75
March 2022	\$659.75	\$0.00	-\$659.75
April 2022	\$659.75	\$0.00	-\$659.75
May 2022	\$659.75	\$0.00	-\$659.75
June 2022	\$659.75	\$0.00	-\$659.75
TOTAL UNPAID RENT			\$4,498.75

I find that the Landlord could not have mitigated its damages under the circumstances as the Tenant continued to occupy the rental unit. I find that the Landlord has established a monetary claim in the amount of \$4,498.75.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy under s. 46(5) of the *Act*. The Landlord is entitled to an order of possession under s. 55 of the *Act*. The Tenant shall give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord has established a monetary claim for unpaid rent. Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$4,498.75** to the Landlord in unpaid rent.

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenant. If the Tenant does 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 Tenant does not comply with the order of 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: July 15, 2022

Residential Tenancy Branch