



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

1st application: OPL FFL

2nd application: OPR-DR MNR-DR FFL

Introduction

This hearing dealt with two landlord Applications for Dispute Resolution (applications) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 30, 2022 (2 Month Notice), to obtain an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 14, 2022 (10 Day Notice), for unpaid rent or utilities and to recover two filing fees.

The landlord, CD (landlord) and their spouse, LD (spouse) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and their spouse were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the first Notice of a Dispute Resolution Proceeding document dated April 12, 2022 (Notice of Hearing 1), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence (Package 1) were served on the tenant by registered mail on April 14, 2022. The registered mail tracking number has been included on the cover page of this decision and labelled as "1" for ease of reference. According to the Canada Post registered mail tracking website, the registered mail package was mailed on April 14, 2022 and was not picked up by the tenant. The landlord testified that on April 17, 2022, they corrected the postal code. Pursuant to

section 90 of the Act, documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was deemed served as of April 22, 2022, which is 5 days after April 17, 2022.

For Package 2, the landlord testified that that package was also served on the tenant by registered mail, this time on May 12, 2022. The registered mail tracking number has been included on the cover page of this decision and labelled as “2” for ease of reference. According to the Canada Post registered mail tracking website, Package 2 was unclaimed and returned to the sender. Therefore, I find the tenant was deemed served as of May 17, 2022, which is 5 days after May 12, 2022. As the tenant did not attend the hearing, I consider both applications to be unopposed and the hearing continued without the tenant present.

Preliminary and Procedural Matters

The landlord confirmed their email address during the hearing. The landlord also confirmed that they are not aware of an email address for the tenant. The landlord was advised that the decision and any related orders will be emailed to the landlord and that the decision only will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 2 Month Notice or an undisputed 10 Day Notice?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to recover either filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 7, 2018 and converted to a month-to-month tenancy after December 31, 2018. Monthly rent was \$895.00 per month and was never increased during the tenancy. The landlord testified that the tenant paid a security deposit of \$447.50 at the start of the tenancy, which the landlord continued to hold. The landlord has not made a request to offset any amount owing with the security deposit.

The 2 Month Notice is dated January 30, 2022 and has an effective vacancy date of April 1, 2022. The landlord testified that they hand-delivered the 2 Month Notice on the

tenant at the rental unit address on January 30, 2022. The tenant did not file an application to dispute the 2 Month Notice.

The 10 Day Notice is dated April 14, 2022 and has an effective vacancy date listed as April 30, 2022, which is after the effective vacancy date of the 2 Month Notice. As a result, I find the 10 Day Notice to be moot, as the tenancy ended on April 1, 2022, by way of the undisputed 2 Month Notice, which I will address below.

The landlord testified that the tenant has not paid \$895.00 in monthly rent since January 2022. The landlord is seeking unpaid rent for February, April, May, June and July of 2022. March 2022 rent is not due, as the month is the free month of compensation, which I will address further below.

Analysis

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

Order of possession – Section 49(9) of the Act applies and states:

49(9) If a tenant who has received a notice under this section **does not make an application for dispute resolution in accordance with subsection (8), 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 by that date.

[emphasis added]

In the matter before me, I find the tenant was served on January 30, 2022 and did not dispute the 2 Month Notice. Therefore, I find the tenant is conclusively presumed to have accepted the end of tenancy date and that the tenancy ended on **April 1, 2022**, the effective vacancy date listed on the 2 Month Notice.

Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days after service on the tenant**. I have used this date as April 1, 2022 has passed and the tenant continues to occupy the rental unit without paying for use and occupancy. In addition, I have reviewed the 2 Month Notice and find that it complies with section 52 of the Act.

I find the 10 Day Notice is moot, as the effective vacancy date comes after the 2 Month Notice effective vacancy date.

I accept the undisputed testimony of the landlord that the tenant owes \$4,475.00 in monthly rent as follows:

1. \$895.00 owing for February 2022
 2. Nothing owing for March 2022 as section 51(1) of the Act provides 1 month as compensation for having been served the 2 Month Notice.
 3. \$895.00 owing for April 2022
 4. \$895.00 owing for May 2022
 5. \$895.00 owing for June 2022
 6. \$895.00 owing for July 2022
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TOTAL OWING IN UNPAID RENT = \$4,475.00

Although the landlord filed 2 applications, I only grant one filing fee as I find the landlord could have reduced their loss by amending the first application. Therefore, I grant **\$100.00** for one filing fee and dismiss the second filing fee pursuant to section 7(2) of the Act, which requires that damages or loss be minimized.

I find the landlord has established a total monetary claim of **\$4,575.00** comprised of unpaid rent arrears of \$4,475.00 plus \$100.00 for one filing fee.

Conclusion

Both applications have merit. The tenancy ended on April 1, 2022.

The landlord is granted an order of possession effective two (2) days after service on the tenant, who continues to occupy the rental unit. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord is also granted a monetary order in the amount of \$4,575.00 pursuant to section 67 of the Act. This order must be served on the tenant and may be enforced in the Provincial Court (Smalls Claims Division).

The decision and two orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant as the landlord does not have an email address for the tenant.

The tenant is cautioned that they can be liable for all costs related to enforcement of both the order of possession and monetary order.

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: July 25, 2022

Residential Tenancy Branch