



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OR-DR MNR-DR FFL**

Introduction

This hearing was reconvened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee of the Application from the Tenant pursuant to section 72.

The Landlord and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated June 15, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, this hearing was scheduled and came on for hearing on July 21, 2022, to consider the Application. Notices of the reconvened hearing were enclosed with the Interim Decision, the Interim Decision and all other required documents, were served by the Residential Tenancy Branch ("RTB") on each of the parties, in accordance with section 89 of the Act.

The Landlord stated he served the Notice of Direct Request Proceeding and his evidence ("NDRP Package") for the original hearing by attaching a copy to the Tenant's door on May 13, 2022. The Landlord submitted a signed and witnessed Proof of Service on Form RTB-44 to corroborate his testimony. I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to:

- an order of possession?
- a monetary order for unpaid rent?
- recover the filing fee of the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on November 21, 2021, on a month-to-month basis, with rent of \$1,250.00 payable on the 1st day of each month. Although the tenancy agreement does not state the Tenant was required to pay a security deposit, the Landlord stated the previous landlord received a deposit of \$750.00 from the Tenant which was transferred to the Landlord at the time of the purchase and sale of the rental unit to the Landlord. The Landlord stated he was holding the deposit in trust on behalf of the Tenant.

The Landlord stated a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated March 31, 2022 ("10 Day Notice") was served on the Tenant's door on March 31, 2022. The Tenant acknowledged she received the 10 Day Notice. The Landlord testified the 10 Day Notice stated the Tenant had rental arrears of \$1,250 as of March 1, 2022. The Landlord stated the rental arrears arose as a result of the Tenant not paying the rent for March 2022 by March 1, 2022. The Landlord stated the Tenant did not pay the rent for March 2022 until April 28, 2022. The Landlord stated the Tenant is still in possession of the rental unit.

The Tenant stated she suffers from a brain injury. The Tenant stated she tried to make an application online but was unable to complete it. The Tenant did not provide a reason why she did not call the Contact Centre of the Residential Tenancy Branch or go to a ServiceBC Office to obtain a paper application for dispute resolution. The Tenant did not explain why she did not pay the rent on March 1, 2021 or within the 5-day dispute period after being served with the 10 Day Notice.

Analysis

1. Landlord's Claim for Order of Possession

Sections 26 and 46(1) through 46(5) of the Act state:

- 26(1) 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.
- 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.*

[emphasis added in italics]

The Landlord stated he served the 10 Day Notice on the Tenant's door on March 31, 2022. The Tenant acknowledged she received the 10 Day Notice. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on April 3, 2022. Pursuant to section 47(4), the Tenant had five days to dispute the 10 Day Notice, being April 8, 2022. The Tenant stated that, while she attempted to make an online application, she was unable to do so. The Tenant did not attempt to call the Contact

Centre of the RTB or go to ServiceBC to obtain a paper application for dispute resolution.

As the Tenant failed to pay the rent or make an application for dispute resolution within the 5-day dispute period, the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice pursuant to section 46(5). Based on the evidence of the parties, I am satisfied Tenant had rental arrears of \$1,150.00 at the time the 10 Day Notice was served on the Tenant. Based on the foregoing, I find the Landlord has demonstrated, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason.

Sections 55(2) and 55(4) state:

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:

- (a) a notice to end the tenancy has been given by the tenant;
- (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;
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[...]

- (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 have reviewed the 10 Day Notice and find it complies with the section form and content requirements of section 52 of the Act. The Tenant has not made an application to dispute the 10 Day Notice. Accordingly, pursuant to section 55(4)(a) of the Act, I

order the Tenant provide the Landlord with vacant possession of the rental unit. I find the tenancy ended on the effective date of the 10 Day Notice, being April 10, 2022.

2. Monetary Order for Unpaid Rent:

Pursuant to the undisputed testimony of the parties, I am satisfied the Tenant has rental arrears of \$1,025.00 as of March 1, 2022. Pursuant to section 55(4)(b) of the Act, I order the Tenant pay the Landlord \$1,250.00 in satisfaction of the rental arrears owed. Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the Tenant's security deposit of \$750.00 from the rental arrears owed by the Tenant, leaving a balance of \$500.00.

As noted above, the tenancy was conclusively deemed to have ended on April 10, 2022. Part B of Residential Tenancy Policy Guideline 3 ("PG 3") states:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

[emphasis in italics added]

Pursuant to PG 3, the Landlord has the option making an application for dispute resolution to seek compensation from the Tenant for overholding the rental unit after April 10, 2022.

3. Reimbursement of Landlords' Filing Fee

As the Landlord has been successful in his application, he may recover the \$100.00 filing fee for his application from the Tenant pursuant to section 72(1) of the Act.

Conclusion:

I order the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and the attached Order of Possession by the Landlord. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Tenant pay the Landlord \$600.00, representing the following:

Description	Amount
Rental Arrears for March 2022	\$1,250.00
Filing Fee for Application	\$100.00
Less Tenant's Security Deposit	\$750.00
Total	\$600.00

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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 23, 2022

Residential Tenancy Branch