Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, OLC, MNDCT, LRE, PSF

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 11, 2022 (the "10 Day Notice") pursuant to section 46;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62;
- a Monetary Order of an unspecified amount for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to sections 29 and 70(1);
- an order that the Landlord provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant and the Landlord attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions. The Landlord was represented by a paralegal, CA.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. They confirmed they were not recording this dispute resolution hearing.

The parties did not raise any issues with respect to the service of documents. The Landlord confirmed receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence. The Tenant acknowledged receipt of the Landlord's documentary evidence submitted for this application.

Although scheduled as a 1-hour hearing, his hearing lasted approximately 1 hour and 46 minutes.

Preliminary Matter – Severing of Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.
>
> **6.2 What will be considered at a dispute resolution hearing**
> The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.
> The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply. (emphasis added)

In this case, I find the most important claim in this application is the Tenant's claim to cancel the 10 Day Notice. I find that all of the Tenant's other claims, aside from the claim for recovery of the filing fee, to be unrelated to the Tenant's claim to cancel the 10 Day Notice.

Accordingly, and as discussed during the hearing, I dismiss all of the Tenant's claims, other than the claims to cancel the 10 Day Notice and to recover the filing fee, with leave to re-apply.

Preliminary Matter – Tenant's Request for Particulars

During the hearing, the Tenant made a request for the Landlord to provide certain particulars. The details regarding the parties' testimonies are described in the Background and Evidence below. I accept the Landlord's testimony regarding the documents already provided to the Tenant. I am satisfied that the Tenant has received sufficient information from the Landlord to make his case. I do not find there is any basis for requiring the Landlord to provide the information in the specific format requested by the Tenant (i.e. running totals). Accordingly, I decline the Tenant's request for the

Landlord to produce particulars pursuant to Rule 5.3 of the Rules of Procedure. This matter will be adjudicated solely on the evidence that has been placed before me in this application.

Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Tenant entitled to recover the filing fee?
3. Is the Landlord entitled to an Order of Possession?
4. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

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

The rental unit is contained within a hotel that is part of a hotel chain owned by Northland Properties Corporation. The Landlord named on this application is the general manager of the specific hotel in which the rental unit is located. Neither party raised the issue of whether Northland Properties Corporation should be added as a party to this application.

The parties had a previous dispute resolution proceeding with a hearing that took place on February 4, 2022. The file number of that proceeding is referenced on the cover page of this decision. I note the Tenant's claims in the previous proceeding are similar to those made in this proceeding, though the previous proceeding dealt with an earlier 10 day notice to end tenancy for unpaid rent. The February 4, 2022 hearing resulted in a decision of the Residential Tenancy Branch dated February 16, 2022 (the "February 16, 2022 Decision), in which the arbitrator found the existence of a residential tenancy between the parties and accepted jurisdiction.

According to the February 16, 2022 Decision, this tenancy began on October 28, 2011. There is no written tenancy agreement between the parties.

The core of the Tenant's complaint in both this and the previous proceeding stems from the taxes charged by the hotel on the Tenant's room fees over the years, including 5%

Goods and Services Tax (“GST”), 3% Municipal & Regional District Tax (“MRDT”), 8% Provincial Sales Tax (“PST”), and previously Provincial Room Tax (“PRT”).

It is not disputed that the Tenant has ceased all payments to the Landlord since June 2021 while continuing to reside in the rental unit. As in the previous dispute resolution proceeding, the Tenant takes the position that he does not owe the Landlord any rent because the Landlord still owes the Tenant money for “overcharged” taxes.

The February 16, 2022 Decision states that the Landlord issued a 10 day notice to end tenancy for unpaid rent on September 21, 2021, which the Tenant applied to dispute. The arbitrator ultimately granted the Tenant’s claim to cancel the 10 day notice on the basis that the Landlord had not clearly established a day on which rent was due. The arbitrator found that the Landlord’s conduct had allowed for rent to be paid on an “ad-hoc basis”, and that the written notice provided by the Landlord was “vague and without sufficient details or deadlines”.

In the previous dispute resolution proceeding, the Tenant had also sought monetary compensation in the amount of $31,000.00 for overpaid taxes. The arbitrator dismissed this claim without leave to re-apply on the basis that the Tenant provided “insufficient evidence” to support this claim and did not produce a monetary order worksheet to show how the amount was calculated.

The present application deals with a new 10 Day Notice issued by the Landlord on March 11, 2022. A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice states that the Tenant has failed to pay rent in the amount of $9,981.30 due on March 10, 2022. The 10 Day Notice is signed by the Landlord and has an effective date of March 21, 2022.

During this hearing, the Landlord explained that in light of the February 16, 2022 Decision, the Landlord served the Tenant with a demand letter on February 28, 2022 (the “Demand Letter”), which provided the Tenant with a deadline of March 10, 2022 to pay the $9,981.30 outstanding rent. A copy of the Demand Letter has been submitted into evidence.

In addition, the Landlord submitted a 13-page invoice (the “13-Page Invoice”) showing a total of $9,981.30 in daily room fees (described as “room revenue”) and GST charged to the Tenant between August 14, 2021 and February 27, 2022. The Tenant acknowledged that he received this 13-Page Invoice along with the Demand Letter. The

Landlord also submitted a second invoice which shows room charges and GST charged after the 10 Day Notice had been issued.

The Landlord explained that since the Tenant failed to pay by the March 10, 2022 deadline, the Landlord issued the 10 Day Notice on the following day. The Landlord submitted a signed witness statement from MK, the hotel's front office manager, as proof that the Tenant had been served by the Landlord in person on March 11, 2022.

The Landlord argued that the Tenant is barred from raising the same claim about overpaid taxes as that claim had already been dismissed by the arbitrator in the February 16, 2022 Decision.

The Landlord explained that they accept the arbitrator's finding of a tenancy relationship, but do not agree with the Tenant not paying rent. The Landlord argued that under section 26(1) of the Act, a tenant must pay rent when it is due, and in this case the rent was due on March 10, 2022. The Landlord argued that the Tenant does not have a right under the Act to deduct any money from the rent. The Landlord requests an Order of Possession and Monetary Order for unpaid rent pursuant to the 10 Day Notice.

During the hearing, the Tenant argued that the Landlord's Demand Letter is asking the Tenant to pay monies which are not owed. The Tenant testified that the Landlord has continued "over 10 years" to charge taxes such as GST, PST, MRDT and PRT. The Tenant stated that the Landlord is still trying to collect taxes as a way of collecting more rent from the Tenant.

The Tenant argued that in the previous dispute resolution proceeding, the Landlord admitted that he had collected over $30,000.00 in taxes from the Tenant. The Tenant argued that the February 16, 2022 Decision explains that the Landlord is not authorized to be collecting any tax from a residential tenant. The Tenant further argued that the February 16, 2022 Decision states that the Tenant does not owe the Landlord any money, because there is a debt of over $30,000.00 in overcharged taxes that the Landlord is willing to admit to.

The Tenant referred to a letter drafted by him and signed by both parties which states as follows (portions redacted for privacy):

January 24, 2022
To [Redacted] Hotel
Attention: [Landlord]

In regards to the hearing of February 4, 2022, I once again ask you for the particulars in regards to this case. Specifically a running total from day one, with a breakdown of individual taxes and fees charged. Your immediate response is required as time is of the essence.

(Signature)
[Tenant]

(Signature) 25/JAN/2022
[Landlord]

The Tenant stated that the Landlord still has not provided the particulars requested by the Tenant in this letter. The Tenant expressed frustration that he was still waiting to receive documents that the Landlord had "agreed to supply" in January 2022.

The Tenant stated that the Landlord has denied the Tenant's residential tenancy rights "for over 10 years". The Tenant argued that the Landlord is still asking for taxes that they are not entitled to, as evidenced by the 13-Page Invoice. The Tenant emphasized that he considers the Landlord to have overcharged him. The Tenant stated that the Landlord has made "no attempt at all" to reconcile these issues.

In response, the Landlord pointed out that there was no obligation for the Landlord to provide the particulars requested by the Tenant as the previous arbitrator had already dismissed the Tenant's monetary claim. The Landlord argued that the Tenant had the opportunity to apply for a review of the February 16, 2022 Decision, but chose not to do so.

The Tenant claimed that his letter of January 24, 2022 "clearly supersedes" the February 16, 2022 Decision. The Tenant argued he had "no way" to produce a monetary worksheet. The Tenant stated that there is no "judgment" that says the Tenant "cannot take this to another court". The Tenant argued that the Landlord's position is a "gross misinterpretation" of the February 16, 2022 Decision.

The Tenant stated that the Landlord is using the taxes to increase the profits of the hotel and that the Landlord has no right to be charging taxes to a residential tenant. The Tenant claimed that $30,000.00 is “the tip of an iceberg”, which only equals the amount of taxes that the Landlord is willing to admit to. The Tenant stated that he would like the Landlord to be compelled to follow through on providing a document that shows the breakdown “from day one”.

The Landlord explained that during the last week of January 2022, they did in fact print around 500 pages of bills beginning from 2011 to give to the Tenant. The Landlord testified that the printing took three days; however, the Tenant was not happy with the bills because they showed the room charges and taxes on a daily basis, rather than as a running total for each separate category. The Landlord explained that they subsequently gave a summary letter to the Tenant. I understand this is the letter referenced in the February 16, 2022 Decision as follows:

> *As part of their evidentiary package the landlord supplied a letter dated January 26, 2022. This letter is reproduced in its entirety:*
>
> > *[The Tenant] as requested in concern to your letter on the 25th January 2022, please note below for the requested information.*
> >
> > *The Total amount paid so far to the hotel since check-in is Room Charges ($228,905.00) + ($31,030.73) GST/PST/PRT (prt for certain period) minus (-) the credit $5666.90 to account (Refund + Complimentary nights to reconcile the extra taxes charges) = Total of $ 254,268.83.*

The Tenant acknowledged he received the 500 pages but claimed that the Landlord is being “intentionally obtuse” by not generating a running total for him.

The Tenant also asserted that the previous arbitrator had said the Tenant did not owe the Landlord any money. The Tenant also claimed that “no court” has said the Tenant “cannot get [his] money back”.

The Tenant claimed that there are other “contractors” or “tenants” living at the hotel who pay monthly rent and do not pay GST. The Landlord denied this allegation. The Landlord stated that everyone is charged on a nightly basis and pays taxes.

Analysis

1. Is the Tenant entitled to cancel the 10 Day Notice?

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a 10 day notice to end tenancy for unpaid rent.

Based on the parties' evidence, I find the Tenant was served with a copy of the 10 Day Notice in person on March 11, 2022 in accordance with section 88(a) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenant had until March 16, 2022 to dispute the 10 Day Notice or pay the unpaid rent. Records show that the Tenant submitted this application late on March 15, 2022. I find the Tenant made this application within the 5-day deadline prescribed by section 46(4)(b).

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, to determine whether the Landlord has established the grounds for issuing the 10 Day Notice, I will consider following sub-issues: (a) whether the Tenant has paid rent to the Landlord, (b) if the Tenant has not paid rent, whether the Tenant has a legal reason to withhold payment of rent, and (c) whether the 10 Day Notice is valid in form and content.

a. Has the Tenant paid rent to the Landlord?

Section 1 of the Act defines "rent" as "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following: (a) a security deposit; (b) a pet damage deposit; (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];".

Section 97(2)(k) of the Act states that the Lieutenant Governor in Council may make regulations "respecting refundable and non-refundable fees that a landlord may or may not impose on a tenant and limiting the amount of a fee that may be imposed".

Sections 6 and 7 of the Residential Tenancy Regulation (the “Regulations”) list the following refundable and non-refundable fees that may be charged by a landlord:

> **Refundable fees charged by landlord**
> 6(1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is
> (a) refundable upon return of the key or access device, and
> (b) no greater than the direct cost of replacing the key or access device.
> (2) A landlord must not charge a fee described in subsection (1) if the key or access device is the tenant's sole means of access to the residential property.
>
> **Non-refundable fees charged by landlord**
> 7(1) A landlord may charge any of the following non-refundable fees:
> (a) direct cost of replacing keys or other access devices;
> (b) direct cost of additional keys or other access devices requested by the tenant;
> (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
> (d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
> (e) subject to subsection (2), a fee that does not exceed the greater of $15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
> (f) a move-in or move-out fee charged by a strata corporation to the landlord;
> (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.
> (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Having reviewed the definition of “rent” under section 1 of the Act together with the excluded fees that are listed in the Regulations, I conclude that indirect taxes such as GST, PST, MRDT, and PRT charged in this case do not fall under the definition of “rent” under the Act. While I find that such taxes are not among the excluded fees prescribed under section 97(2)(k), I am satisfied that indirect taxes which have been separately collected by the Landlord and remitted to the government do not constitute rent as they

are not "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities […]" (emphasis added). I find that the Landlord does not receive any money or value for the indirect taxes because they are simply remitted to the government. In this case, I find that only the $49.00 daily "room charge" or "room revenue" charged by the Landlord constitute "rent" under the Act. For the parties' reference, the Act does not require rent to be paid on a monthly basis.

I note that the circumstances of this case are highly unusual and that indirect taxes would not normally be charged on rent in the context of a residential tenancy. However, I am satisfied that prior to the issuance of the February 16, 2022 Decision, it was not unreasonable for the Landlord to believe they were obligated to collect these taxes from the Tenant. I accept the Landlord's evidence that they charge such taxes on all their rooms in the hotel.

Nevertheless, in my view, a finding that these indirect taxes do not fall within the definition of "rent" under the Act has the following implications in this case:

- I find the Tenant cannot treat his payment of such taxes in the past as overpayment of rent to the Landlord.
- I find the Landlord cannot require the Tenant to pay these taxes as unpaid rent.

In this case, it is not disputed that the Tenant has not made any payment whatsoever to the Landlord since June 2021, and that the Tenant has throughout all this time resided in the rental unit and continues to do so. The Tenant's argument, as in the previous hearing, is that he does not owe the Landlord any rent because the Tenant has already overpaid the Landlord. However, as I have found above, the indirect taxes paid by the Tenant in this case do not fall under the definition of rent in the Act, and therefore the Tenant's payment of such taxes cannot not constitute payment of rent to the Landlord.

Accordingly, I find that the Tenant has not paid rent to the Landlord.

b. Does the Tenant have a legal reason to withhold payment of rent?

Section 26(1) of the Act states that "a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless

the tenant has a right under the Act to deduct all or a portion of the rent". (emphasis added)

During the hearing, the Tenant did not cite any specific authority under the Act for his right to deduct from the rent payable to the Landlord.

I note that the legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

I find that the Tenant's past payment of indirect taxes do not qualify under any of the above listed lawful reasons to withhold payment of rent.

Absent a clear lawful reason under the Act for the Tenant to withhold payment of rent, I find the Tenant should have continued paying rent to the Landlord while commencing an application to resolve the issue of the taxes. The Tenant's failure to keep these two matters separate has resulted in the Tenant fatally jeopardizing this tenancy.

I note the Tenant did make a monetary claim for the taxes in the previous dispute resolution proceeding. In my view, the Tenant had a potentially viable claim against the Landlord to seek reimbursement of the taxes paid when in retrospect it appears the Landlord may not have been legally obligated to collect and remit such taxes. However, I am satisfied that this claim has been fully laid to rest in the February 16, 2022 Decision, for which the review deadline has passed. I reproduce the relevant portions of the February 16, 2022 Decision as follows:

> *The tenant acknowledged having failed to pay rent pursuant to the notice, however, he argued he had overpaid rent in the form of unauthorized daily GST payments and thus sought a return of those funds in the form of his $31,000.00 monetary claim. […]*
>
> *[…]*

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to a monetary award.

I find that the tenant has failed to demonstrate an entitlement to a monetary award due to insufficient evidence and detail in their application. I note, refunds were previously given by the landlord for "overpaid" taxes in 2016-2017, while other nightly credits and "freebies" were given throughout the course of the tenancy.

The tenant did not produce a monetary order worksheet per section 2.5 of the Rules of Procedure and failed to detail how they arrived at their figure. The applicant simply asked for a return of the entire amount paid throughout the tenancy. This figure of $31,000.00 did not take into account the above mentioned past tax repayments and nightly credits. For these reasons, I dismiss the tenant's application for a monetary award without leave to reapply.

(emphasis added)

Based on the foregoing, I conclude the evidence does not establish that the Tenant had a legal reason to deduct from the rent.

c. Is the 10 Day Notice valid in form and content?

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,
(c) state the effective date of the notice,
(d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
(e) when given by a landlord, be in the approved form.

In this case, I have reviewed a copy of the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I note that the 10 Day Notice states the amount of unpaid rent to be $9,981.30, which includes GST. As I have determined above, the Landlord is not entitled to claim GST as unpaid rent. In my view, this discrepancy does not invalidate the 10 Day Notice under section 52 of the Act.

To the extent that a reviewing court would find this discrepancy to affect the validity of the 10 Day Notice under section 52, I find it would be reasonable to amend the amount of unpaid rent stated on the 10 Day Notice pursuant to section 68(1) of the Act to remove the GST component and leave only the room fees. I find that the Tenant received a copy of the 13-Page Invoice along with the Demand Letter. I find that the 13-Page Invoice states a total balance owing of $9,981.30, of which $475.30 is GST and the rest is “room revenue” (at $49.00 per day). I note that during this hearing, the Tenant did not dispute the rate of $49.00 per day charged by the Landlord. I am satisfied, pursuant to section 68(1)(a) of the Act, that the Tenant knew or should have known that the $9,981.30 listed on the 10 Day Notice consists of $9,506.00 in room revenue and $475.30 in GST claimed by the Landlord. I further find that pursuant to section 68(1)(b) of the Act, it is reasonable in the circumstances to amend the amount of unpaid rent stated on the 10 Day Notice from $9,981.30 to $9,506.00, which removes the $475.30 in GST.

Moreover, I am satisfied that the February 16, 2022 Decision did not include a finding by the previous arbitrator that the Tenant did not owe the Landlord any rent. In my view, the reason that the earlier 10 day notice was cancelled was because the Landlord had not clearly established a due date, not that the Tenant had already paid the rent or that rent need not be paid. The relevant portion of the February 16, 2022 Decision states as follows:

> *While I accept that rent must be paid whether or not the landlord complies with the Act, I find a key element of section 26(1) to be "when it is due." A review of the landlord's evidence demonstrates there has been no consistency as to when rent on this unit is due. I find the landlord has failed to prove why this 10 Day Notice should be found to be valid.*
>
> *[…]*
>
> *It is evident that the landlord's conduct has allowed for rent to be paid on an ad-hoc basis in various amounts on different dates. I find their failure to clearly establish a day on which rent is due to be detrimental to their ability to enforce the 10 Day Notice. I also find that the written notice provided by the landlord to rectify any amounts due to be vague and without sufficient detail or deadlines.*
>
> *For these reasons, I uphold the tenant's application to cancel the landlord's 10 Day Notice.*

I find that since the February 16, 2022 Decision, the Landlord has taken adequate steps to address the previous arbitrator's concern. I find that the Landlord's Demand Letter established a clear due date of March 10, 2022 for the Tenant to pay the overdue rent. I am satisfied that the Tenant did not make any payment to the Landlord despite having received the Demand Letter, the 13-Page Invoice, and the 10 Day Notice. I have also found that there is no legal reason for the Tenant to deduct from rent in the circumstances and that the 10 Day Notice is valid in form and content.

Based on the above analysis, I conclude that the Landlord has met its burden to establish on a balance of probabilities the grounds for issuing the 10 Day Notice.

Accordingly, I dismiss the Tenant's claim to cancel the 10 Day Notice without leave to re-apply.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in cancelling the 10 Day Notice. Accordingly, I decline to award the Tenant recovery of the filing fee under section 72(1) of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

3. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

> **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.

Having found the 10 Day Notice to comply with the requirements of section 52 and having dismissed the Tenant's claim to dispute the 10 Day Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

4. Is the Landlord entitled to a Monetary Order for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states as follows:

> If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy.
>
> If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the

> time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

In this case, the Tenant has applied to dispute the 10 Day Notice and the conclusive presumption does not apply. The Tenant has not vacated the rental unit.

Pursuant to section 68(2) of the Act, I order that for the purposes of calculating unpaid rent under section 55(1.1), the parties' tenancy is ended effective the date of the dispute resolution hearing, or July 7, 2022, rather than the effective date stated on the 10 Day Notice.

Based on the Landlord's documentary evidence and the parties' oral testimonies, I am satisfied the Tenant owes additional rent to the Landlord, from the day that 10 Day Notice was issued, to the date of this hearing.

Based on the invoices submitted by the Landlord, I find that rent is charged in the form of a daily "room revenue" or "room charge" of $49.00.

I find that the amount of rent owing by the Tenant from February 28, 2022 to July 7, 2022 is $49.00 per day × 130 days = $6,370.00. I conclude that the total amount of rent owing by the Tenant to the Landlord from August 14, 2021 to July 7, 2022 is $9,506.00 + $6,370.00 = $15,876.00.

Pursuant to section 55(1.1) of the Act, I order that the Tenant pay to the Landlord the sum of $15,876.00.

Conclusion

The Tenant's claims to cancel the 10 Day Notice and to seek recovery of the filing fee are dismissed without leave to re-apply. The Tenant's remaining claims on this application are severed and dismissed with leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **$15,876.00**. 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 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: August 5, 2022

Residential Tenancy Branch