



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTLAND WILLINGDON LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNR**

Introduction

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended through the agents RC and TK (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions.

Preliminary issues were the following.

1. Attendance of Tenant (“the tenant”)

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

2. Service

The landlord testified the tenant did not serve the Notice of Hearing or Application for Dispute Resolution. The RTB informed the landlord of the hearing in an automatically generated email.

3. Recording

The persons attending were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. They confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

4. Delivery of Decision

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

5. Dismissal of Tenant's Application

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply.

Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered. Only the evidence referred to by the landlord was used in this this decision.

As the tenant has not attended the hearing and presented evidence, and the landlord has attended, I dismiss the tenant's application without leave to reapply

6. Order of Possession

I informed the landlord of the following.

If I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I am required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord.

Section 55 states as follows:

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.

The landlord requested an Order of Possession.

7. Monetary Order

Section 55(1.1) states that in certain circumstances, the director must grant an order requiring the payment of the unpaid rent.

Section 55(1.1) states:

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 requested a Monetary Order of \$2,805.00 for outstanding rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

The landlord provided uncontradicted evidence regarding the tenancy as the tenant did not attend the hearing. The landlord testified as follows.

The landlord is the purchaser of the building in which the unit is located and is uncertain of the start date of the monthly tenancy believed to be before 2016.. Rent is \$935.00 payable on the first of the month. The tenant submitted a security deposit of \$420.00 at the beginning of the tenancy which is held by the landlord.

The landlord testified the tenant owed rent in the amount of \$2,805.00 for January to March 2022. The tenant has made subsequent payments for accumulating rent which were accepted for use and occupancy only. The current balance of outstanding rent is \$2,805.00.

The tenant has not vacated the premises.

The 10 Day Notice was dated April 21, 2022. A copy of the Notice was submitted which was in the standard RTB form. The Notice required the tenant to vacate the premises for non-payment of rent by May 6, 2022. The landlord testified the Notice was sent by registered mail to the tenant on April 21, 2022 thereby effecting service under sections 89 and 90 on April 26, 2022.

The tenant applied to dispute the 10 Day Notice on April 25, 2022.

The landlord testified the tenant did not pay the outstanding rent within the five-day period after service and payments for subsequent months was accepted for use and occupancy only.

The landlord requested authorization to apply the security deposit to the award.

The landlord's claim is summarized as follows:

| ITEM | AMOUNT |
|-------------------------|-------------------|
| Outstanding rent | \$2,805.00 |
| (Less security deposit) | (\$420.00) |
| TOTAL | \$2,385.00 |

Analysis

To be effective, the 10 Day Notice must comply with the provisions of Section 52. I find the 10 Day Notice complied with Section 52 of the *Act*.

I find the 10 Day Notice was properly served upon the tenant on April 26, 2022, pursuant to Sections 88 and 90 of the *Act*.

A tenant may dispute a 10 Day Notice under Section 46 by making an application for dispute resolution within five days after the date the tenant receives the notice.

As the tenant did not attend the hearing and no evidence was entered or submissions made, I have ordered the tenant's Application for Dispute Resolution dismissed without leave to reapply.

Pursuant to Section 55(1), the director must grant to the landlord an Order of Possession of the rental unit if the landlord's notice to end tenancy complies with Section 52 and the tenant's application is dismissed. The landlord testified the tenant continued to occupy the unit. As the Notice complies with section 52 and the tenant's application has been dismissed, I therefore grant the landlord an Order of Possession.

Section 55(1.1) states that in these circumstances, the director must grant an order requiring the payment of the unpaid rent.

Section 55(1.1) states:

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.

I accept the landlord's credible testimony and find the landlord has proven the amount of rent owing. Accordingly, I also grant the landlord a monetary award pursuant to section 67 in the amount of \$2,805.00.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

In summary, I grant the landlord a monetary order for **\$2,385.00** as follows:

| ITEM | AMOUNT |
|-------------------------|-------------------|
| Outstanding rent | \$2,805.00 |
| (Less security deposit) | (\$420.00) |
| TOTAL | \$2,385.00 |

In summary, I dismiss the tenant's application without leave to reapply. I grant the landlord an Order of Possession effective on two days' notice. I grant the landlord a Monetary Order in the amount of **\$2,385.00**.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an Order of Possession which is effective two days after service on the tenant.

I also grant the landlord a Monetary Order in the amount of **\$ \$2,385.00.**

These Order(s) must be served on the tenant. They may be filed and enforced in the Courts of the Province of BC.

If the tenant fails to comply with the Order(s), the landlord may file Order(s) with the Courts of British Columbia to be enforced as Order(s) 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 26, 2022

Residential Tenancy Branch