



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended. All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained and the parties given an opportunity to ask questions.

1. Preliminary Issue - Direct Request Proceeding

This hearing is a continuation of an *ex parte* proceeding (Direct Request Proceeding) and the Interim Decision.

Pursuant to section 55(4) of the Residential Tenancy Act, the Interim Decision in this matter was made without a participatory hearing on April 26, 2022. The Decision was based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the written submissions and evidence of the applicant.

The Adjudicator ordered the Direct Request Proceeding be adjourned and reconvened in accordance with section 74 of the Act so an Arbitrator could conduct a participatory hearing to determine the details of the landlord's application. The Adjudicator noted that both the parties had the same address in the submitted documentary evidence.

The Adjudicator ordered the applicant must serve the Notice of Reconvened Hearing, the Interim Decision, and all other required documents, upon the respondent within three (3) days of receiving the decision

2. Preliminary Issue - Service

The landlord testified as follows. The landlord provided affirmed testimony that the landlord served the tenant with the Notices of Reconvened Hearing, the Interim Decision, the Notice of Hearing and Application for Dispute Resolution as directed by the Adjudicator in the Interim Decision.

The landlord testified they sent the documents by registered mail on April 29, 2022, deemed received by the tenant under section 90 of the *Act* five days later, on May 4, 2022.

The landlord submitted the mailing receipt as evidence which included the Canada Post Tracking Number.

The tenant attended the hearing and did not raise issues of service.

Pursuant to the landlord's evidence, the Interim Decision and sections 89 and 90, I find the landlord served the tenant with the required documents on May 4, 2022 in compliance with the Act.

3. Preliminary Issue - Recording

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

4. Preliminary Issue - Delivery of Decision

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

5. Preliminary Issue – Security Deposit

The landlord explained the amount of the outstanding rent is now \$4,100.00, increased from \$100.00 which was owing when the 10 Day Notice was issued on March 8, 2022.

The landlord's application pre-dated the due date for rent for subsequent months and as such the landlord's claim does not reflect the full outstanding rent. The landlord testified that rent each month in the amount of \$800.00 has accumulated as outstanding since April 2022. The landlord requested a Monetary Order in the amount of the current outstanding rent of \$4,100.00.

Section 64(3)(c) of the *Act* and section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent incurred after the issuance of the 10 Day Notice and the filing of the tenant's Application for Dispute Resolution. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, I amend the landlord's application to increase the landlord's overall claim as requested. The total monetary order requested by the landlord is \$4,100.00 as well as \$100.00 reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order for unpaid rent as well as an award for reimbursement of the filing fee?

Background and Evidence

The landlord provided the following testimony and supporting documents.

A copy of the tenancy agreement was submitted. The landlord testified that the monthly tenancy began on November 29, 2021. The building is owned by the landlord and the landlord submitted proof of ownership documents from BC Assessment 2022.

A separate and self-contained lower apartment was rented to the tenant. The landlord also lives in the building. The parties do not share a kitchen or bathroom.

Rent is \$800.00 monthly payable on the 1st of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$400.00 which the landlord holds.

The landlord testified the tenant did not pay rent in full for March 2022. The landlord accordingly issued a 10 Day Notice dated March 8, 2022 and served

that day upon the tenant by posting to the tenant's door, thereby effecting service under section 90, 3 days later, on March 11, 2022.

A copy of the Notice was submitted as evidence which is in the RTB form. The landlord submitted a signed and witnessed supporting Proof of Service in the RTB form.

The Notice stated the tenant owed \$800.00 in rent. The Notice provided the tenant may within 5 days pay the rent in full or file an Application for Dispute Resolution to dispute the Notice. The tenant filed an Application for Dispute Resolution on March 24, 2022, outside the 5-day period. The tenant did not pay the rent in full. As stated earlier, the landlord testified the tenant now owes \$4,100.00 in outstanding rent.

The tenant acknowledged they have not paid all the rent owing. The tenant offered several reasons including financial inability to pay.

The parties agreed the tenant continues to occupy the unit.

The landlord requested a Monetary Order of \$4,100.00 for outstanding rent to date.

The landlord requested reimbursement of the filing fee of \$100.00 pursuant to section 72.

The landlord requested authorization to apply the security deposit to the award pursuant to section 72.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Outstanding rent	\$4,100.00
Filing fee	\$100.00
(Less security deposit)	(\$400.00)
Monetary Order Requested	\$3,800.00

The landlord requested an immediate Order of Possession.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

I accept the landlord's credible evidence supported by documents and I find the tenant was served with the 10 Day Notice on March 11, 2022 in accordance with the *Act*. I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant did not file to dispute the Notice within 5 days of service and is conclusively presumed to have accepted that the tenancy ends on the effective day of the Notice under section 46:

Landlord's notice: non-payment of rent

(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)

As I find the tenant has not filed the dispute within the time period, therefore, I dismiss the tenant's application to cancel the 10 Day Notice.

I have found the Notice complies with section 52.

Pursuant to section 55(1) I must grant the landlord an Order of Possession:

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.**

(1.1) 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.

(emphasis added)

I therefore grant the landlord an Order of Possession effective 2 days after service on the tenant.

Monetary Order

Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes \$4,100.00 to the landlord for outstanding rent as claimed.

As the landlord is successful in this application, I award the landlord reimbursement of the filing fee of \$100.00 pursuant to section 72.

I authorize the landlord to apply the security deposit to the award pursuant to section 72.

I grant the landlord a Monetary Order as requested pursuant to section 55(1.1).

My monetary award to the landlord is summarized:

ITEM	AMOUNT
Outstanding rent	\$4,100.00
Filing fee	\$100.00
(Less security deposit)	(\$400.00)
Monetary Order	\$3,800.00

I grant the landlord a monetary award for **\$3,800.00**.

Conclusion

I grant an **Order of Possession** to the landlord effective **two days** after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I grant a monetary order to the landlord in the amount of **\$3,800.00**.

The Orders must be served on the tenant. If the tenant fails to comply with the Orders, the Orders may be filed and enforced in the Courts of the Province of BC.

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 16, 2022

Residential Tenancy Branch