



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL, FFL; CNR, FFT, CNC, PSF**

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 recover the filing fee for this application pursuant to section 72.

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;

- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This matter was set for hearing by telephone conference.

HG and SM attended as agents for the landlords (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Preliminary issues follow.

1. Attendance of Tenants (“the tenant”)

The tenants (“the tenant”) did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 11 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. 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.

3. Delivery of Decision

The landlord confirmed the email address to which the Decision shall be sent.

4. Dismissal of Tenant’s Application

Rule 7.3 of the Rules of Procedure also 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.

5. Order of Possession - Withdrawal

The landlord provided affirmed testimony that the tenant suddenly vacated the unit in mid- July 2022 and did not provide a forwarding address.

At the time the tenant moved out, rent was in arrears in the amount of \$8,850.00.

As the tenant vacated the unit, the landlord withdrew the application for an Order of Possession which is dismissed without leave to reapply

6. Preliminary Issue – Amendment

The landlord requested the following amendment:

An amendment to increase the amount of rent owing to \$8,850.00.

The landlord explained that the Application for Dispute Resolution was filed on April 20, 2022 and the accumulated unpaid rent when the tenant vacated was \$8,850.00.

As the landlord's application was brought on April 20, 2022, the accumulated rent for subsequent months is not included in the claim.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include unpaid rent that accumulated after the dispute was filed. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application as requested.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent and reimbursement of the filing fee?

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing.

The parties entered into a written tenancy agreement for a tenancy which began on October 1, 2021, and ended when the tenant moved out in mid-July 2022. The landlord testified the monthly rent was \$1,700.00 and was payable on the first of the month. The tenant provided a security deposit at the beginning of the tenancy of \$850.00 which the landlord holds. The tenant has not authorized the landlord to apply the security deposit to the outstanding rent.

The landlord issued a 10 Day Notice dated April 2, 2022 for unpaid rent. The Notice was served that day by posting to the tenant's door, thereby effecting service under section 90 of the *Act* three days later, on April 5, 2022. A copy of the Notice was submitted which is in the RTB form.

The Notice stated that the tenant did not pay rent due on April 1, 2022 and provided the tenant could apply for dispute resolution 5 days after service. The

tenant disputed the within the time. The tenant's applications have been dismissed without leave to reapply.

The landlord testified the tenant also did not pay rent for subsequent months and the total outstanding rent owing is \$8,850.00. The landlord submitted copies of text exchanges with the tenant itemizing the amount owing and testified the information was based on bank transfers from the tenant for rent.

The landlord requested a Monetary Order for outstanding rent of \$8,850.00, reimbursement of the filing fee and authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Outstanding rent	\$8,850.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$850.00)
TOTAL AWARD REQUESTED	\$8,100.00

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I have reviewed the 10 Day Notice filed in evidence. I find the 10 Day Notice complies with section 52 of the Act.

I accept the evidence of the landlord that the tenant was in rent arrears of \$8,850.00 when they moved out in mid-July 2022. I find the tenant was served with the 10 Day Notice on April 5, 2022 and submitted a dispute within the 5 day period.

Although the tenant disputed the 10 Day Notice, I have dismissed the tenant's application without leave to reapply and uphold the 10 Day Notice.

As I have dismissed the tenant's application and have upheld the 10 Day Notice, I must consider the provision of section 55 of the Act that state I must grant the landlord a Monetary Order for unpaid rent.

As the tenant has vacated the unit, the landlord does not require an Order of Possession.

I accept the landlord's undisputed testimony that the tenant owes the landlord the amount of unpaid rent in the total amount of \$8,850.00. I find the landlord has established a total monetary claim of \$8,850.00. I find I must grant the landlord an award in this amount.

I order that the landlord retain the security deposit of \$850.00 to offset the amount owed.

Under section 72, I award the landlord reimbursement of the filing fee of \$100.00.

My award to the landlord is:

ITEM	AMOUNT
Outstanding rent	\$8,850.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$850.00)
TOTAL AWARD REQUESTED	\$8,100.00

In summary, the tenant's application is dismissed without leave to reapply. The landlord is granted a Monetary Order in the amount of **\$8,100.00** pursuant to section 55(4)(b) and 67 of the Act.

Conclusion

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

The landlord's application for an Order of Possession is dismissed without leave to reapply.

The landlord is granted a Monetary Order in the amount of **\$8,100.00** pursuant to section 55(4)(b) and 67 of the Act.

This order may be filed in the Courts of the Province of BC enforced.

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 19, 2022

Residential Tenancy Branch