



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent and Assistant attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent, Assistant and I were the only ones who had called into this teleconference. The Landlord's Agent and Assistant were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Agent and Assistant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Agent and Assistant testified that they were not recording this dispute resolution hearing.

The Landlord's Agent served the Tenant with a 10 Day Notice by Canada Post registered mail on April 6, 2022. The Landlord's Agent uploaded the Canada Post registered mail receipt and tracking number as proof of service. I noted the registered

mail tracking number on the cover sheet of this decision. I find that the 10 Day Notice was deemed served on the Tenant on April 11, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord's Agent testified that he served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN on May 4, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord's Agent referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on May 9, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord's Agent personally served the Tenant with the Landlord's evidence on August 3, 2022. The Landlord's Agent's Assistant confirmed he witnessed service of the Landlord's evidence package on the Tenant. I find that the Landlord's evidence was served on the Tenant on August 3, 2022 pursuant to Section 88(a) of the Act.

Preliminary Matter

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord's Agent's evidence that the original application must be amended from their original application amount of \$5,600.00 to \$16,800.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

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

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's Agent confirmed that this periodic tenancy began on November 11, 2021. Monthly rent is \$2,800.00 payable on the first day of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$5,600.00 in outstanding rent on April 1, 2022. The effective date of the 10 Day Notice was April 20, 2022.

The Landlord's Agent testified that the Tenant has not paid rent for March to August, 2022, and the outstanding rent amount is \$16,800.00. The Landlord's Agent also stated that the Landlord has not provided permission to the Tenant to withhold rent, and the Tenant has not received an Arbitrator's Order authorizing her to withhold rent.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$16,800.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: 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.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of 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 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 by that date.*

...

The Landlord's 10 Day Notice was deemed served on April 11, 2022. I find the 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant did not apply for dispute resolution in accordance with Section 46(4) of the Act. I find pursuant to Section 46(5) of the Act that the Tenant is conclusively presumed to

have accepted that the tenancy ended on April 20, 2022, and must vacate the rental unit.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Sections 55(2) and 55(4) of the Act read as follows:

Order of possession for the landlord

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:*

...

(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;*

...

(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 previously found that the 10 Day Notice complied with Section 52 of the Act, and I uphold the Landlord's 10 Day Notice. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act which will be effective two (2) days after service on the Tenant.

The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. The total outstanding rent amount is \$16,800.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord

in partial satisfaction of the monetary award. The Landlord's Monetary Award is calculated as follows:

Monetary Award

Total Outstanding Rent:	\$16,800.00
Less security deposit:	-\$1,400.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$15,500.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$15,500.00. 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 of British Columbia 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 Act.

Dated: August 19, 2022

Residential Tenancy Branch