



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPC, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- cancellation of the landlords’ 1 Month Notice to End Tenancy for Landlord’s Use of Property (“1 Month Notice”), pursuant to section 47.

While the landlord’s agent attended the hearing by way of conference call, the tenant did not. I waited until 9:41 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue - Landlords amended application

The landlord provided documentation to show that the application was amended to include a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant has filed to dispute that notice as part of their application, accordingly; I have considered all notices before me as follows.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 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.

The agent gave sworn testimony that on May 11, 2022 copies of the Application for Dispute Resolution hearing package ('Application') and evidence was served to the tenant by registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with copies of the landlords' application and evidence on May 16, 2022.

The agent provided undisputed testimony that the tenant was served with a One Month Notice on April 6, 2022 by registered mail. In accordance with the sections 88 and 90 of the *Act*, I find that the tenant was deemed served on April 11, 2022.

The agent provided undisputed testimony that the tenant was served with the 10 Day Notice, on May 4, 2022 by registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on May 9, 2022.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent gave undisputed testimony regarding the following facts. The tenancy began on June 24, 2020, with monthly rent set at \$2,900.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$1,450.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on May 4, 2022. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service The agent

testified that the tenant has not paid any rent since the 10 Day Notice was issued to the tenant.

The agent testified that the tenant owes \$1800.00 for May rent, and the full amount for June, July, and August 2022 for a total arrears of \$10,500.00.

Analysis

Section 55(1) of the *Act* reads 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.

In the absence of any evidence or submissions from the tenant, I order the tenant's applications dismissed without liberty to reapply. I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia. In addition, pursuant to section 55(1.1) of the *Act*, I am required to grant the landlord a monetary order for unpaid rent without the landlord being required to file a separate application if the tenant applies to dispute a 10 Day Notice as they have done in this matter. The landlord is entitled to the \$10,500.00 in unpaid rent.

The landlords continue to hold the tenant's security deposit in the amount of \$1,450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the

landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

As I have found that the tenancy is terminated pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I am not required to consider the One Month Notice to End Tenancy for Cause.

Conclusion

As the tenant did not attend this hearing, both of their applications are dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$9,150.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and the filing fee, and allows the landlord to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for May 2022	\$1,800.00
Unpaid Rent for June 2022	2,900.00
Unpaid Rent for July 2022	2,900.00
Unpaid Rent for August 2022	2,900.00
Recovery of Filing Fee	100.00
Less Security Deposit	-1,450.00
Total Monetary Order	\$9,150.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 30, 2022

Residential Tenancy Branch