



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the *Act*
- For an order of possession pursuant to section 55 of the *Act*
- For reimbursement of the filing fee pursuant to section 72 of the *Act*

The landlord and agent confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The landlord and her agent S.G. attended the hearing. The tenant did not appear. The parties were affirmed.

The landlord’s agent confirmed service of the 10 Day Notice by personally giving it to the tenant on June 6, 2022. The landlord provided an RTB-34 “Proof of Service” form in their evidentiary package. This document was signed by a witness and dated June 6, 2022. Pursuant to section 88 and 90 of the *Act* the tenant is deemed served with the 10 Day Notice on June 6, 2022.

The landlord testified they served a Notice of Dispute Resolution by personally giving it to the tenant on August 4, 2022. As part of their evidentiary package the landlord included a copy of a letter titled, “Proof of Service – Notice of Dispute Resolution Proceeding Package.” This letter was dated August 4, 2022, and signed by a witness. Pursuant to sections 89 and 90 of the *Act* the tenant is deemed to have been served with the Notice and supporting materials on August 4, 2022.

Preliminary Matters

An adjudicator previously adjourned this matter from a Direct Request proceeding to a participatory hearing as they could not determine whether the accommodations included shared kitchen/bathroom facilities and could not make a finding as to whether the RTB

had jurisdiction over the matter. The landlord stated in the hearing that the unit occupied by the tenant was completely separate, had its own kitchen and bathroom, and no facilities were shared with the landlord who occupied the main residence. Therefore, I find that the tenant's unit was a separate unit and therefore I have jurisdiction over the matter.

Issue(s) to be Decided

1. Is the 10 Day Notice to End Tenancy for Unpaid Rent valid and enforceable against the tenant? If so, is the Landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order?
3. Is the landlord entitled to recovery of the filing fee for this application?

Background and Evidence

A copy of the tenancy agreement was produced in evidence and shows that the tenancy commenced on August 15, 2021, for a one-year fixed term. The tenant was required to pay \$950.00 per month in rent due on the 15th of each month and the landlord currently holds a \$425.00 Security Deposit in trust. The tenant is still living in the subject residence.

On June 23, 2022, the landlord applied for an Order of Possession and a Monetary Award via a Direct Request proceeding. This application was adjourned to a participatory hearing because the adjudicator found they were unable to determine if the parties shared the residence. The adjudicator noted, "I find that [the] tenant's address and landlord's address on the Application for Dispute Resolution are identical...I find there is a question regarding whether I have jurisdiction to decide the matter."

The landlord's agent stated that the unit occupied by the tenant is in the basement and the landlord occupies the upstairs portion of the residence. However, the basement is a fully contained suite, with a separate kitchen and bathroom, and a separate entrance. There are no shared facilities.

On June 6, 2022, the landlord issued a 10 Day Notice for unpaid rent of \$950.00 due on May 15, 2022. The landlord advised that subsequent to the issuance of the 10 Day Notice, the tenant made two rent payments for May. On June 14, 2022, he paid \$500.00, and on June 18, 2022, he paid a further \$300.00. Therefore \$150.00 in rent remains outstanding for the month of May.

The tenant further failed to pay the entire amount of rent for June 15, July 15, and August 15, 2022. The amount of rent currently outstanding is \$3,000.000. The landlord therefore seeks an Order of Possession for failure to pay rent and a Monetary Order for the currently outstanding rent.

The landlord also seeks to recover the \$100.00 filing fee for this application.

Analysis

Rule 6.6 of the RTB Rules of Procedure states that the person making the application bears the onus. In this case, the landlord bears the onus of establishing that the 10 Day Notice is valid and enforceable, and that the landlord is therefore entitled to an Order of Possession.

The 10 Day Notice was before me. I find that it complies with section 52 of the Act and is correct in form and content. Further, the landlord, through her agent satisfied me that the tenant has failed to pay rent for the months of May through August 2022.

RTB Procedural Guideline 4 states:

4.2 Amending an application 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, 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.

The evidence is, and I find that the tenant has not paid rent since the time of the initial application, and it is appropriate to amend the Application to include the amount of unpaid rent subsequent to service of the Notice upon the tenant. The application is therefore amended pursuant to section 64(3)(c) of the *Act* to reflect the amount of rent owing to date of \$3,000.00 (unpaid rent of June, July and August 2022 plus \$150.00 outstanding).

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy on June 6, 2022. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) and section 55(2)(b) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 16,

2022. As that has not occurred, 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in *Policy Guideline #16* in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord has satisfied her onus and established that she is entitled to a Monetary Order pursuant to section 67 of the *Act* for the outstanding rent between the months of May through August 2022. She provided a direct request worksheet detailing the dates of the two rent payments made in June for May rent and then through her agent advised at the hearing that no further rent payments have been made by the tenant. I had no evidence before me showing that any further rent payments had been made.

As the landlord is successful in her application, she is also entitled to recover her \$100.00 filing fee. Using the offsetting provisions contained in section 72 of the *Act*, the landlord may retain the tenant's security deposit in partial satisfaction for their monetary award.

Conclusion

The landlord is granted an Order of Possession pursuant to section 55 of the *Act* for the subject premises, effective two days after service of the Order on the tenant. The Order should be served as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The landlord is granted a Monetary Order pursuant to section 67 of the *Act* in the amount of \$2,475.00 as follows:

Item	Amount
Partial unpaid rent May 2022	150.00
Unpaid rent June through August 2022 (3 x 950)	2,850.00
Less return of filing fee and security deposit	(-525.00)
Total =	\$2,475.00

The Order should be served as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 31, 2022

Residential Tenancy Branch