



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILLIAM YEN & ASSOCIATES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On May 3, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 11, 2022, this hearing was scheduled to commence via teleconference at 11:00 AM on September 2, 2022.

M.C. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 24-minute teleconference. At the outset of the hearing, I informed M.C. that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

She advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on May 12, 2022 (the registered mail tracking number is noted on the first page of this Decision), and she stated that this package was returned to sender. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received this package five days after it was mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

M.C. advised that the tenancy started on March 15, 2010, that the rent was currently established at an amount of \$1,073.00 per month, and that it was due on the first day of each month. A security deposit of \$475.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenant by being posted to the Tenant's door on April 8, 2022, and she referenced the proof of service form submitted to corroborate service. The Notice indicated that \$1,073.00 was owing for rent on April 1, 2022. As well, the effective end date of the tenancy was noted as April 22, 2022.

She stated that the Tenant paid \$1,073.00 for April 2022 rent on May 13, 2022, and a receipt was provided for use and occupancy only. She advised that the Tenant then only paid \$500.00 on May 30, 2022, leaving a balance of \$573.00 outstanding for the remainder of May 2022 rent. She stated that the Tenant has not paid any rent for June, July, August or September 2022. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount of **\$4,865.00**. She referenced the documentary evidence submitted to support this position.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the Notice, I am satisfied that this was a valid Notice.

The undisputed evidence before me is that the Notice was served on April 8, 2022, by being posted to the Tenant's door. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was deemed received on April 11, 2022, the Tenant must have paid the rent in full on April 16, 2022, or disputed the Notice by Tuesday April 19, 2022 (due to the statutory holiday), at the latest. The undisputed evidence is that the Tenant did not pay the rent in full by April 16, 2022 to cancel it, or dispute the Notice by April 19, 2022. As the Tenant did not do either, and as he did not have a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I grant the Landlord an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Moreover, regarding the Landlord's claims for monetary compensation, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$4,865.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this claim.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for May 2022	\$573.00
Rental arrears for June 2022	\$1,073.00
Rental arrears for July 2022	\$1,073.00
Rental arrears for August 2022	\$1,073.00
Rental arrears for September 2022	\$1,073.00
Filing fee	\$100.00
Security deposit	-\$475.00
Total Monetary Award	\$4,490.00

Conclusion

Based on the above, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$4,490.00** in the above terms, and 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 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: September 2, 2022

Residential Tenancy Branch