



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR MNRT MNDCT RR LRE OLC LAT RPP**
 LL: OPU-DR MNU-DR FFL

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants made one application (“Tenant’s Application”) for:

- cancellation of Ten Day Notices to End Tenancy for Unpaid Rent and/or Utilities (“10 Day Notices”) served by the Landlord on the Tenant pursuant to section 46;
- an order that the Tenant be paid back by the Landlord the cost of emergency repairs made by the Tenant to the rental unit pursuant to section 67;
- an order for compensation for the Tenant’s monetary loss or other money owed by the Landlord pursuant to section 67;
- an order to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- an order to suspend or set conditions on the Landlord’s right to enter the rental unit pursuant to section 70;
- an order that the Landlord comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement pursuant to section 62;
- an order to allow the Tenant to change the locks to the rental unit pursuant to section 31; and
- an order for the Landlord to return the Tenant’s personal property pursuant to section 65.

The Landlord made one application (“Landlord’s Application”) for:

- an order of possession for non-payment of rent and/or utilities pursuant to sections 46 and 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 55; and

- authorization to recover the filing fee of the Landlord's Application from the Tenant pursuant to section 72.

The original hearing of the Application was held on August 11, 2022 at 11:00 am ("Original Hearing"). At the Original Hearing, it did not appear that either the Landlord or Tenant had served their respective Notices of Dispute Resolution Proceeding on the other party or that the Tenant had served her evidence on the Landlords prior to the Original Hearing, as required by the *Residential Tenancy Branch Rules of Procedure* ("RoP"). As a result, pursuant to Rule 7.8 of the RoP, I adjourned the Original Hearing and issued an interim decision dated August 12, 2022 ("Interim Decision"). The Interim Decision stated the Tenant was to re-serve her evidence on the Landlord and the Landlord was to re-serve her evidence on the Tenant together with any additional evidence to respond to claims made in the Tenant's Application and for the Landlord to submit any response evidence to the Residential Tenancy Branch ("RTB"). The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRPs"), scheduled for September 27, 2022 at 1:30 pm ("Adjourned Hearing"), were served on the parties by the RTB.

The Landlord, the Landlord's agent ("MP") and the Tenant attended the Original Hearing. At the Original Hearing, I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the RoP. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord and MP appeared at the Adjourned Hearing. The Tenant did not attend the Adjourned Hearing even though I left the teleconference hearing connection for the entire duration of the Adjourned Hearing. I confirmed the correct call-in numbers and participant codes were provided in the Adjourned NDRPs that were served on the Landlord and Tenant by the RTB. I also confirmed throughout the duration of the Adjourned Hearing, which ended at 1:54 pm, that the Tenant or a representative of the Tenant was not in attendance and that the Landlord, MP and I were the only ones on the conference call for the Adjourned Hearing. The Landlord and MP were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Adjourned Hearing, MP stated that, in accordance with the instructions set out in the Interim Decision, the Landlord re-served her evidence and her response evidence on the Tenant by registered mail on September 8, 2022. MP provided the Canada Post tracking number for service of the Landlord's evidence on the Tenant. I find the Tenant

was served with the Landlord's evidence by registered mail in accordance with the provisions of section 88 of the Act. Pursuant to section 90 of the Act, I find the Tenant was served with the Landlord's evidence on September 13, 2022.

MP stated the Landlord did not receive any evidence by the Tenant.

Preliminary Matter – Severance and Dismissal of Tenant's Claims

At the outset of the Original Hearing, I observed the Tenant's Application included claims for (i) an order for compensation for the Tenant's monetary loss other money owed by the Landlord and; (ii) an order for the Tenant to be paid back by the Landlord for the cost of emergency repairs made by the Tenant; (iii) an order to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; (iv) an order to suspend or set conditions on the Landlord's right to enter the rental unit; (v) an order that the Landlord comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement; (vi) an order to allow the Tenant to change the locks to the rental unit; and (vii) an order for the Landlord to return the Tenant's personal property (the foregoing claims are collectively referred to as the "Tenant's Other Claims").

Rule 2.3 of the Rules states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the Original Hearing, I advised the parties the primary issue in the Tenant's Application was whether the tenancy would continue or end based on the Ten Day Notices to End Tenancy for Unpaid Rent and/or Utilities. Accordingly, I find the Tenant's Other Claims are not sufficiently related to the primary issue of whether the Ten Day Notices to End Tenancy are upheld or set aside. Based on the above, I will dismiss the Tenant's Other Claims with or without leave, depending upon whether the Ten Day Notices are set aside or, in the alternative, the Landlord is granted an Order of Possession for the rental unit.

Preliminary Matter – Effect of Tenant’s Non-Attendance at Adjourned Hearing

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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 the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

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 the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the Adjourned Hearing, I dismiss the Tenant’s Application its entirety pursuant to Rule 7.3.

Preliminary Matter – Request by Landlord for Amendment to Landlord’s Application

At the Adjourned Hearing, MP stated the Tenant has not vacated the rental unit and there are now rental arrears of \$7,200.00 for the months of April to September 2022 inclusive owing to the Landlord. MP stated the Landlord is now seeking to recover all rental arrears owing by the Tenant and requested an amendment to the Landlord’s Application.

Rule of Procedure 4.2 of the RoP 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.

As the Tenant has not given up possession of the rental unit, I find a claim for recovery by the Landlord for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenant. Based on the above, I order that the Landlord's Application be amended to claim \$7,200.00 from the Tenant for rental arrears pursuant to Rule 4.2.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for unpaid rent?
- a monetary order for rental arrears?
- recover the filing fee of the Landlord's Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's Application and my findings are set out below.

MP submitted into evidence a copy of the tenancy agreement dated July 9, 2021 between the Landlord and Tenant. MP stated the tenancy commenced on August 1, 2021, on a month-to-month basis, with rent of \$1,200.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$600.00 by July 9, 2021. MP stated the Tenant paid the security deposit and that the Landlord was holding the deposit in trust for the Tenant. MP stated that the Tenant has not vacated the rental unit as of the date of this Adjourned Hearing.

MP stated the Landlord served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated April 1, 2022 ("10 Day Notice"). MP submitted into evidence a copy of the 10 Day Notice that stated the Tenant owed the Landlord \$1,200.00 for unpaid rent as of April 1, 2022. MP submitted into evidence three additional Ten Day Notices

for Unpaid Rent and/or Utilities dated May 2, 2022, July 1, 2022 and August 2, 2022 that claimed for further rental arrears. MP stated the Tenant has not made any payments of rent whatsoever for the months of April through September 2022 inclusive and that the Tenant now has rental arrears of \$7,200.00, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Apr-22	\$1,200.00	\$0.00	\$1,200.00
01-May-22	\$1,200.00	\$0.00	\$2,400.00
01-Jun-22	\$1,200.00	\$0.00	\$3,600.00
01-Jul-22	\$1,200.00	\$0.00	\$4,800.00
01-Aug-22	\$1,200.00	\$0.00	\$6,000.00
01-Sep-22	\$1,200.00	\$0.00	\$7,200.00
Total	\$7,200.00	\$0.00	\$7,200.00

Analysis

1. Landlord's Claim for Order of Possession

Subsection 26(1) and 46(1) through 46(5) of the Act state:

- 26(1) *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.
- 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 pay the rent or 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 to which the notice relates by that date.

The undisputed testimony of MP was the 10 Day Notice was served on the Tenant's door on April 2, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have been served with the 10 Day Notice on April 5, 2022. Pursuant to section 46(4), the Tenant had until April 11, 2022, being the next business day after the expiry of the 5-day dispute period, within which to make an application for dispute resolution to dispute the 10 Day Notice. The Tenant made the Tenant's Application within the 5-day dispute period.

Based on the undisputed testimony of MP, I am satisfied the Tenant had rental arrears of \$1,200.00 as of April 2, 2022. Based on the foregoing, Landlord has demonstrated, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. Section 55(1) states:

- 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.

The provisions of section 55(1) of the Act are mandatory and I must grant an Order of Possession to the Landlord when the criteria of that section have been satisfied. As noted above, I have dismissed the Tenant's Application as the Tenant did not attend the Adjourned Hearing. I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 55 of the Act. Pursuant to section 55(1) of the Act, I order the Tenant provide the Landlord with vacant possession of the rental unit.

Pursuant to section 68(2)(b) of the Act, I find the tenancy ended on September 27, 2022.

2. Monetary Order for Unpaid Rent:

Based on the undisputed testimony of MP, I am satisfied the Tenant has total rental arrears of \$7,200.00 for the months of April through to September 2022 inclusive. Section 55(1.1) of the Act states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The provisions of section 55(1.1) of the Act are mandatory and I must grant an order to the Landlord requiring payment of the unpaid rent by the Tenant when the criteria of that section are satisfied. Pursuant to section 55(4)(b), I order the Tenant pay the Landlord \$7,200.00 in satisfaction of the rental arrears owed for the months of April through to September 2022 inclusive. Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the Tenant's security deposit of \$600.00 from the rental arrears owed by the Tenant.

3. Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in the Landlord's Application, she may recover the \$100.00 filing fee for the Landlord's Application from the Tenant pursuant to section 72(1) of the Act.

4. Dismissal of Tenant's Claims Severed Claims

As noted above, I severed the Tenant's Other Claims from the Tenant's Application. I order that the claims I severed from the Tenant's Application for (i) an order for compensation for the Tenant's monetary loss other money owed by the Landlord; (ii) an order for the Tenant to be paid back by the Landlord for the cost of emergency repairs made by the Tenant and; (iii) an order for the Landlord to return the Tenant's personal property are dismissed with leave to reapply. As such, the Tenant has the option of filing another application for dispute resolution with the RTB to make those claims.

As I have found the tenancy has ended and Order of Possession has been granted to the Landlord, I find the claims that I have severed from the Tenant's Application for (i) an order to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; (ii) an order to suspend or set conditions on the Landlord's right to enter the rental unit; (iii) an order that the Landlord comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement and; (iv) an order to allow the Tenant to change the locks to the rental unit are no longer relevant and, as a result, I dismiss those claims without leave to reapply.

Conclusion:

I order the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and the attached Order of Possession by the Landlord. 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 order the Tenant pay the Landlord \$6,700.00, representing the following:

Description	Amount
Rental Arrears for the months of April through to September 2022 inclusive	\$7,200.00
Filing Fee for Landlord's Application	\$100.00
Less Tenant's Security Deposit	-600.00
Total	\$6,700.00

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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 28, 2022

Residential Tenancy Branch