



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR

Landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated April 25, 2022 (the "10 Day Notice").

This hearing also dealt with the Landlord's cross-application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to sections 46 and 55;
- a Monetary Order of \$11,520.00 for unpaid rent pursuant to sections 26 and 67; and
- authorization to recover the Landlord's filing fee from the Tenant pursuant to section 72.

The Landlord attended this hearing and was represented by YW, the Landlord's agent and interpreter. They were given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant's application initially listed five other individuals, GG, JH, DJ, SK, and CM (collectively, the "Other Residents") as co-applicants. GG and JH attended this hearing and gave testimony under oath. GG and JH confirmed they did not have authority to represent the Tenant or those of the Other Residents who were not in attendance.

The Tenant did not attend this hearing.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord's evidence indicates that the Landlord served the Tenant with the Landlord's notice of dispute resolution proceeding package and supporting documentary evidence (collectively, the "Landlord's NDRP Package") by registered mail on May 20, 2022. The Landlord submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. Tracking records for the package indicate that it was delivered on May 27, 2022. Based on the foregoing, I find the Tenant was served with the Landlord's NDRP Package in accordance with sections 88(c) and 89(2)(b) of the Act on May 27, 2022.

GG and JH also acknowledged receipt of the Landlord's NDRP Package.

The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and supporting documentary evidence.

Preliminary Matter – Standing of the Other Residents

GG testified the Tenant and the Other Residents all moved into the rental unit at the same time. GG testified the Tenant and the Other Residents are co-workers. GG testified the Other Residents paid rent to the Tenant, who in turn paid rent to the Landlord. GG testified the Tenant stole the Other Residents' money and did not pay rent to the Landlord. GG testified the Tenant admitted she stole the money and was moving out of the rental unit. GG testified the Other Residents have filed a police report against the Tenant. GG stated that the Other Residents want to pay rent and stay in the rental unit. GG expressed frustration that the Landlord did not communicate with the Other Residents about the Tenant's non-payment of rent.

In response, YW expressed sympathy on behalf of the Landlord for the Other Residents' situation. YW submitted that nevertheless, as far as the Landlord was concerned, the Landlord was only dealing with the Tenant and not the Other Residents. The Landlord submitted a copy of the tenancy agreement into evidence. I have reviewed the tenancy agreement and find that it is signed by the Landlord and the Tenant only.

Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants ("Policy Guideline 13") defines a "tenant" as follows:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

[...]

G. TENANTS SHARING COMMON SPACE

Sometimes tenants under separate tenancy agreements share common space. Each tenant is responsible for the obligations established under their own tenancy agreement and is not responsible for debts or damages relating to the other tenancy.

An example of tenants sharing common space is two tenants renting rooms under separate tenancy agreements on the same floor of a home and sharing a common bathroom and living room. The tenancy agreements for each tenant state that they are individually responsible for paying rent for their respective tenancies and both tenants paid separate security deposits to the landlord.

(emphasis added)

Under the Act, there may be residents of a rental unit who are not “tenants”. For example, Policy Guideline 13 states as follows regarding “occupants”:

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could

end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

(emphasis added)

As a further example, Residential Tenancy Policy Guideline 19. Assignment and Sublet states as follows regarding “subtenants”:

C. SUBLETTING

Sublets as contemplated by the Residential Tenancy Act

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant’s tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

(emphasis added)

In this case, I find the Landlord and the Tenant have a written tenancy agreement for the entire rental unit, and the agreement does not include any of the Other Residents as signatories or parties. As such, I find that none of the Other Residents are co-tenants with the Tenant on the same tenancy agreement.

Furthermore, I find that none of the Other Residents have entered into separate verbal or written tenancy agreements with the Landlord. I find that none of the Other Residents have paid separate security deposits or rent to the Landlord.

Based on the foregoing, I conclude that the Other Residents are not the Landlord's "tenants" and there is no direct contractual relationship between the Landlord and any of the Other Residents.

I further conclude that none of the Other Residents have standing to dispute the 10 Day Notice in their personal capacities. Accordingly, I have amended the style of cause on the Tenant's application to remove the Other Residents as co-applicants.

In my view, any claims that the Other Residents may have are against the Tenant and not the Landlord. I make no findings regarding the legal nature of the relationship between the Tenant and the Other Residents. I also make no findings as to the merits of any claims that the Other Residents may have against the Tenant.

Preliminary Matter – Tenant's Non-Attendance

Rule 7.3 of the Rules of Procedure states:

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.

Having found the Tenant to be duly served with notice of this hearing and the Landlord's cross-application materials, I directed that the hearing be conducted in the absence of the Tenant.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

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

This tenancy commenced on April 1, 2019 and is month-to-month. Rent is \$2,900.00 due on the first day of each month. The Tenant paid a security deposit of \$1,450.00 and a pet damage deposit of \$200.00, which are held by the Landlord in trust.

The Landlord's evidence indicates that the 10 Day Notice was posted to the Tenant's door on April 25, 2022. The Landlord submitted photographs of the notice taped to the Tenant's door in support of service. The Tenant's application indicates that the 10 Day Notice was received on April 25, 2022.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice is dated April 25, 2022 and has an effective date of May 10, 2022. The 10 Day Notice includes the rental unit address, the Tenant's name, and is signed by the Landlord.

The 10 Day Notice states that the Tenant has failed to pay rent of \$920.00 for December 2021, and \$2,900.00 each month from January 2022 to April 2022, for a total of \$12,520.00 owing.

YW testified that there had been discussions with the Tenant to clear the arrears, but the Landlord eventually decided to make this application due to the overdue rent that had accumulated, which was quite a concern. YW testified that the Landlord needed to keep up with other bills as well.

YW testified the Landlord received a partial payment of \$1,000.00 from the Tenant on April 26, 2022. YW stated that the Landlord also received full payment from the Tenant for the months of May, June, July, and August 2022. YW testified that the Landlord issued use and occupancy receipts to the Tenant for these payments. YW confirmed that the Landlord would still like the Tenant to move out. YW confirmed that the total amount of rent owing by the Tenant is \$12,520.00 less \$1,000.00, or \$11,520.00.

Analysis

1. Is the Landlord entitled to an Order of Possession?

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

Based on the Landlord's evidence and the Tenant's application which acknowledges receipt of the 10 Day Notice, I find that the Tenant was served with the 10 Day Notice on April 25, 2022 in accordance with section 88(g) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. In this case, the Tenant had until April 30, 2022 to dispute the 10 Day Notice or pay the outstanding rent in full. Records of the Residential Tenancy Branch indicate that the Tenant's application was submitted on April 29, 2022. I find the Tenant's application was made within the 5-day dispute deadline stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Although an application was made, the Tenant did not attend the hearing to dispute the 10 Day Notice. I accept the Landlord's undisputed evidence that the Tenant did not pay

rent as stated on the 10 Day Notice. I find there is no evidence to suggest that the Tenant had a legal right under the Act to withhold payment of rent to the Landlord.

I further find that the Landlord has given receipts for use and occupancy to the Tenant for payments received after the issuance of the 10 Day Notice. I find the Landlord made it clear that the Landlord was still seeking an end to this tenancy.

Based on the foregoing, I find that the Landlord has established the grounds for ending this tenancy as stated in the 10 Day Notice. Accordingly, I dismiss the Tenant's claim to dispute the 10 Day Notice.

Section 55(1) of the Act states:

Order of possession for the landlord

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.

Having found the 10 Day Notice to comply with the requirements of section 52 and having dismissed the Tenant's claim to dispute the 10 Day Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states as follows:

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy.

If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

In this case, there is an application to dispute the 10 Day Notice and the conclusive presumption does not apply. There is also no evidence to suggest that the Tenant has vacated the rental unit as at the date of the hearing.

Pursuant to section 68(2) of the Act, I order that for the purposes of calculating unpaid rent under section 55(1.1), the parties' tenancy is ended effective the date of the dispute resolution hearing, or August 26, 2022, rather than the effective date stated on the 10 Day Notice.

I accept the Landlord's undisputed evidence that as at the date of the hearing, the Tenant owes \$11,520.00 in unpaid rent as follows:

Item	Amount
Unpaid Rent Balance for December 2021	\$920.00
Unpaid Rent for January 2022 to April 2022	\$11,600.00
Less \$1,000.00 Partial Payment Received on April 26, 2022	- \$1,000.00
Total	\$11,520.00

Pursuant to section 55(1.1) of the Act, I order that the Tenant pay to the Landlord the sum of \$11,520.00 for unpaid rent.

3. Is the Landlord entitled to recover the filing fee?

The Landlord has been successful in this hearing. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the full amount of the Tenant's \$1,450.00 security deposit and \$200.00 pet damage deposit held by the Landlord in partial satisfaction of the total sum awarded in this decision.

The Monetary Order granted to the Landlord for the balance of the amount awarded is calculated as follows:

Item	Amount
Unpaid Rent Balance for December 2021	\$920.00
Unpaid Rent for January 2022 to April 2022	\$11,600.00
Less \$1,000.00 Payment Received on April 26, 2022	- \$1,000.00
Filing Fee	\$100.00
Less Security Deposit	- \$1,450.00
Less Pet Damage Deposit	- \$200.00
Total Monetary Order for Landlord	\$9,970.00

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain the Tenant's \$1,450.00 security deposit and \$200.00 pet damage deposit in partial satisfaction of the sum awarded in this decision.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$9,970.00**. 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 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 08, 2022

Residential Tenancy Branch