



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL

Introduction

On June 10, 2022, the Landlord made an Application for a Dispute Resolution Proceeding seeking an Order of Possession for Unpaid Rent 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”) and seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*.

This Application was subsequently scheduled to commence via teleconference at 9:30 AM on October 27, 2022.

R.S. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 19-minute teleconference. At the outset of the hearing, I advised the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the hearing at 9:30 AM and monitored the teleconference until 9:49 AM. Only a representative for the Applicant dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only other person who had called into this teleconference.

R.S. advised that the Notice of Hearing package was served to the Tenant by hand on June 25, 2022, and he referenced the proof of service document submitted to corroborate this service. As well, this package was served by registered mail on June 25, 2022 (the registered mail tracking number is noted on the first page of this Decision). Based on this solemnly affirmed testimony and documentary evidence provided, I am satisfied that the Tenant was duly served the Notice of Hearing package.

He then advised that the Landlord's evidence was placed under the Tenant's door "about a month ago". As this evidence was not served to the Tenant in a manner in accordance with Section 88 of the *Act*, I have excluded this evidence and will not 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?

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.

R.S. testified that the Landlord purchased the rental unit and took possession of it on November 1, 2022. He stated the Landlord assumed this tenancy from the previous owner. He submitted that rent was established at an amount of \$1,000.00 per month and that it was due on the first day of each month. A security deposit was not transferred from the previous owner as one was not paid. As well, a copy of the signed tenancy agreement was not submitted as documentary evidence as the previous owner did not complete one.

He advised that the Notice was served to the Tenant by hand and by posting it to the Tenant's door on May 15, 2022. Proof of service was submitted to corroborate this service. The Notice indicated that \$1,000.00 was owing for rent on May 1, 2022. As well, the effective end date of the tenancy was noted as May 28, 2022, on the Notice.

He submitted that the Tenant was supposed to give up vacant possession of the rental unit due to an agreement with the previous owners. However, the Tenant did not vacate and then did not pay any rent on November 1, 2022. They did not pursue any rent because of threats made by the Tenant; however, the Tenant then paid \$1,000.00 on April 1, 2022, for April rent. The Tenant then did not pay rent on May 1, 2022, so the Landlord served the Notice. In addition, he testified that the Tenant has not paid any rent since service of the Notice.

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.

The undisputed evidence before me is that the Tenant was served the Notice on May 15, 2022 by hand and by being posted to the 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 served on May 15, 2022 by hand, the Tenant must have paid the rent in full or disputed the Notice by May 20, 2022, at the latest. The undisputed evidence is that the Tenant did not pay the rent or dispute the Notice by this date. Furthermore, there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent. As such, I am satisfied that the Tenant breached the *Act* and jeopardized their 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 find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

With respect to 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 **\$6,000.00** for the outstanding rental arrears from May 1, 2022, up to the end of October 2022. The Landlord is at liberty to apply for any rental arrears prior to May 2022.

Pursuant to Section 67 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	\$1,000.00
Rental arrears for June 2022	\$1,000.00
Rental arrears for July 2022	\$1,000.00
Rental arrears for August 2022	\$1,000.00
Rental arrears for September 2022	\$1,000.00
Rental arrears for October 2022	\$1,000.00
Total Monetary Award	\$6,000.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service** 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.

The Landlord is also provided with a Monetary Order in the amount of **\$6,000.00** 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: October 27, 2022

Residential Tenancy Branch