



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent dated May 20, 2022 (the "10 Day Notice") pursuant to sections 46 and 55;
- a Monetary Order of \$2,013.58 for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent LM and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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 parties did not raise any issues with respect to the service of dispute resolution documents.

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). The Tenant also acknowledged receipt of the Landlord's updated rent ledgers sent on September 4, 2022. Based on the foregoing, I find the Tenant was served with the NDRP Package in accordance with sections 88 and 89 of the Act. I find the Tenant was

sufficiently served with the Landlord's additional evidence on September 4, 2022, pursuant to section 71 of the Act.

LM also acknowledged that the Landlord received the Tenant's documentary evidence. As such, I find the Landlord was served with the Tenant's documentary in accordance with section 88 of the Act.

Preliminary Matter – Landlord's Request for Amendment

LM testified that the Landlord's application was made in June 2022 and had only listed unpaid May and June 2022 rent. LM testified the Tenant is still residing in the rental unit. LM submitted that the Landlord seeks to recover payment for the months of July, August, and September 2022 as well.

Rule 4.2 of the Rules of Procedure 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.

(emphasis added)

As the Tenant has not left the rental unit, I find it is reasonable for the Landlord to seek an amendment of its application to include compensation for use of the rental unit by the Tenant for the additional unpaid months up to and including the date of the hearing. Based on the Landlord's evidence and pursuant to Rule 4.2, I allowed the Landlord to amend its application to claim compensation for the Tenant's use of the rental unit for the months of July, August, and September 2022.

Issues to be Decided

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

Background and Evidence

This tenancy commenced on September 1, 2004 and is month-to-month. Rent is \$1,656.79 due on the first day of each month. The Tenant paid a security deposit of \$500.00 which is held in trust by the Landlord. A copy of the tenancy agreement has been submitted into evidence.

LM confirmed that the 10 Day Notice was sent to the Tenant via registered mail on May 20, 2022. The Landlord submitted a registered mail receipt and a tracking number in support. Tracking records show that the package was delivered on May 26, 2022.

The Landlord submitted a copy of the 10 Day Notice into evidence. The 10 Day Notice is dated May 20, 2022 and has an effective date of June 6, 2022. The 10 Day Notice states that the Tenant failed to pay rent of \$5,666.26 due on May 1, 2022. The Landlord submitted a Ledger Summary into evidence which explains that this amount represents rent arrears owed by the Tenant from October 2021 to May 2022.

LM referred to a decision of the Residential Tenancy Branch dated April 19, 2022 (the "Previous Decision") included in the Landlord's evidence. The file number for the Previous Decision is referenced on the cover page of this decision. In the Previous Decision, the Landlord was granted a Monetary Order of \$5,009.47 for unpaid rent owing by the Tenant from October 2021 to April 2022.

LM confirmed that the Landlord seeks a Monetary Order of \$3,983.95 for the arrears owing by the Tenant since May 2022. LM referred to the Ledger Summary as of September 4, 2022 submitted by the Landlord for the updated figures.

LM explained that the Landlord had tried to work out a payment plan with the Tenant many times, including by proposing that the Tenant sign a Rent Arrears Repayment Agreement. LM testified the Tenant responded to the Landlord's offer with a counteroffer that crossed out many terms in the Landlord's draft agreement. LM testified that the Landlord did not consider the counteroffer to be acceptable and did not agree to more time for the Tenant to pay the overdue rent.

LM confirmed the Landlord seeks an Order of Possession for unpaid rent under the 10 Day Notice.

In response, the Tenant agreed that the Landlord's "accounting" is correct. The Tenant acknowledged receipt of the 10 Day Notice and did not dispute the amount claimed as owing by the Landlord.

The Tenant testified he had contacted the Landlord's representatives about finding a solution. The Tenant disagreed with LM's characterization of the Tenant's response to the Landlord's offer. The Tenant argued that the counteroffer he had sent to the Landlord can be interpreted as "binding".

The Tenant argued that the Landlord is a "professional organization" and should maintain a "level of professionalism". The Tenant stated that he is hopeful for a "reasonable plan".

The Tenant submitted a copy of the Landlord's draft Rent Arrears Repayment Agreement with the Tenant's proposed changes into evidence. The Tenant also submitted copies of correspondence between the parties.

In his written submissions, the Tenant concluded as follows:

14. With the contract I have in some months there will be overtime so during the next 18 months I can pay all the arrears with a minimum amount paid each month of \$1,500...\$750 every two weeks; and,

15. I respectfully request that RTB provide this option to me.

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 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 the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 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 a copy of the 10 Day Notice and find that the 10 Day Notice to comply with the requirements of section 52 in form and content.

Based on the parties' evidence, I find that the Tenant was served with a copy of the 10 Day Notice via registered mail on May 26, 2022, in accordance with section 88(c) of the Act.

Section 46(4) of the Act permits a tenant to dispute a 10 day notice to end tenancy for unpaid rent, or pay the outstanding rent in full, within 5 days after receiving such notice.

Therefore, the Tenant had until May 31, 2022 to dispute the 10 Day Notice or pay the outstanding rent in full. In this case, the Tenant did not apply to dispute the 10 Day Notice or pay the outstanding rent in full by May 31, 2022.

I note the Tenant is seeking more time to pay the arrears, as the Tenant had indicated so during the hearing and also stated as such in his written submissions.

However, section 66(2) of the Act states that the director may extend the time limit established by section 46(4) of the Act for a tenant to pay overdue rent only if (a) the extension is agreed to by the landlord, or (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

Based on the evidence presented, I find the parties were not able to agree on a payment plan for the Tenant's rent arrears. I find the Tenant responded to the

Landlord's offer with a counteroffer that crossed out many terms in the Landlord's proposed Rent Arrears Repayment Agreement. I accept LM's testimony that the Landlord did not consider the counteroffer to be acceptable and did not agree to more time for the Tenant to pay the overdue rent. I also do not find the Tenant's counteroffer to be "binding" as there is no evidence that the Landlord had accepted the Tenant's counteroffer. Furthermore, I find there is no evidence to suggest that the Tenant failed to pay rent due to emergency repairs or an order of the director.

As such, I find that neither of the two scenarios described in section 66(2) applies in the circumstances, and that I do not have authority to give the Tenant more time to pay the rent arrears.

Additionally, while the Tenant attended this hearing and submitted evidence for the Landlord's application, I find the Tenant did not himself make an application for dispute resolution to dispute the 10 Day Notice.

Section 46(5) of the Act states as follows:

Landlord's notice: non-payment of rent

[...]

(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.

Therefore, pursuant to section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, which was June 6, 2022.

I note the Tenant had argued in his written correspondence to the Landlord, but not during the hearing, that the doctrine of estoppel applies because the Tenant had made "irregular rent payments" and "for a number of months no word from [the Landlord] was received that this was not agreeable". In my view, it is not necessary for me to consider this argument as I have found the Tenant to be conclusively presumed to have accepted that the tenancy ended on June 6, 2022. However, I would note that I am not satisfied the doctrine would assist the Tenant in this case, as the Landlord has already

applied for and as been awarded past rent owing up to April 2022 in the Previous Decision, and is dealing with the remaining rent owing in this application.

Sections 55(2)(b) and 55(4) of the Act state:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the Tenant was served with the 10 Day Notice on May 26, 2022, the time for disputing the 10 Day Notice expired on May 31, 2022, and the Tenant did not pay rent in full or make an application for dispute resolution to dispute the 10 Day Notice. Accordingly, I conclude that the Landlord is entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

As the effective date stated on the 10 Day Notice has already passed, 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 compensation for unpaid rent?

Based on the Landlord's evidence and as acknowledged by the Tenant, I find the Tenant did not pay rent in full when due on May 1, 2022 and June 1, 2022. Based on the Landlord's evidence, I find that of the rent owing ($\$1,656.79 \times 2 \text{ months} = \$3,313.58$), the Tenant made partial payments totalling \$1,800.00 (\$100.00 + \$400.00 + \$500.00 + \$300.00 + \$500.00) and left a balance owing of \$1,513.58 ($\$3,313.58 - \$1,800.00$).

Pursuant to section 55(4)(b) of the Act, I order the Tenant pay to the Landlord \$1,513.58 for unpaid May and June 2022 rent.

3. Is the Landlord entitled to compensation for overholding?

Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Section 57(1) of the Act defines an “overholding tenant” as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

Based on the parties' evidence, I find that the Tenant is an overholding tenant under section 57(1) of the Act, and that the Landlord is entitled to compensation for the Tenant's use of the rental unit up to the end of September 2022 as sought during the hearing.

Pursuant to section 57 of the Act, I order that the Tenant pay to the Landlord \$2,470.37 (equivalent to $\$1,656.79 \times 3$ months less payments received totalling \$2,500.00) as compensation for overholding from July to September 2022.

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

The Landlord has been successful in this application. 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 Tenant's \$500.00 security deposit held by the Landlord in partial satisfaction of the total awarded in this application.

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

Item	Amount
Rent for May and June 2022 (\$1,656.79 \times 2 months)	\$3,313.58
Less Partial Payments Received	- \$1,800.00

(\$100.00 + \$400.00 + \$500.00 + \$300.00 + \$500.00)	
Compensation for Overholding in July, August, and September 2022 (\$1,656.79 × 3 months)	\$4,970.37
Less Partial Payments Received (\$500.00 + \$500.00 + \$200.00 + \$550.00 + \$750.00)	- \$2,500.00
Filing Fee	\$100.00
Less Security Deposit	- \$500.00
Total Monetary Order for Landlord	\$3,583.95

Conclusion

Pursuant to section 55 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 \$500.00 security deposit in partial satisfaction of the sum awarded in this application.

Pursuant to sections 55, 57, and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **\$3,583.95** for the balance awarded in this decision. 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 3, 2022

Residential Tenancy Branch