



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNR

Introduction

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

- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated July 13, 2022 (the "10 Day Notice") pursuant to section 46.

The Landlord's agent IC attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that IC and I were the only ones who had called into the hearing.

I informed IC that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Dispute Address

The dispute address as stated in the Tenant's application was missing the street type. During the hearing, IC confirmed the correct dispute address. I have updated the dispute address accordingly.

Preliminary Matter – Amendment of Parties

This application initially named IC as the sole respondent and landlord. However, the parties' tenancy agreement and the 10 Day Notice indicate that the landlord is the British Columbia Housing Management Commission. IC confirmed that he is an agent of the Landlord. As such, I have removed IC as a respondent to this application and added the British Columbia Housing Management Commission as the Landlord pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

IC confirmed receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). I find the Landlord was sufficiently served with the NDRP Package pursuant to section 71(2) of the Act.

IC testified that the Landlord's documentary evidence was given to the Tenant in person and via registered mail sent on September 28, 2022. IC provided a registered mail tracking number in support (referenced on the cover page of this decision). Tracking records show that the package was delivered on September 29, 2022. Based on the foregoing, I find that the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Preliminary Matter – Tenant's Non-Attendance

Rule 7.3 of the Rules of Procedure provides as follows:

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.

As the Tenant did not attend the hearing for his own application while the Landlord's agent IC duly attended, and in the absence of any submissions or substantive evidence, I order the Tenant's claim for the Landlord to comply with the Act, the regulations, or tenancy agreement be dismissed without leave to re-apply.

I directed the hearing to continue in the Tenant's absence to determine whether the Tenant is entitled to cancel the 10 Day Notice, and if not, whether the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy commenced on January 1, 2009 and is currently month-to-month. Rent is presently \$331.00 due on the first day of each month. The Tenant did not pay any security or pet damage deposit.

IC testified that a copy of the 10 Day Notice was posted to the Tenant's door on July 13, 2022. The Tenant's application indicates that the 10 Day Notice was received on July 13, 2022.

Copies of the 10 Day Notice have been submitted into evidence. The 10 Day Notice is dated July 13, 2022 and has an effective date of July 26, 2022. The 10 Day Notice includes the rental unit address, the Tenant's name, and is signed by IC as an agent of the Landlord. The 10 Day Notice states that the Tenant has failed to pay rent of \$732.00 due on July 1, 2022.

IC testified the Tenant's rent changed from \$481.00 per month to \$331.00 per month following an annual review on March 3, 2022.

IC testified the Tenant started falling behind on rent in 2019 and has since signed several rent repayment agreements for the arrears. IC testified that since June 2022, the Tenant has not paid any rent or any installments required under the most recent rent repayment agreement.

The Landlord submitted copies of the rent repayment agreements and the Tenant's account statement into evidence. The most recent rent repayment agreement is signed by the Tenant on February 25, 2022 and states that the Tenant is to repay \$25.00 per

month for 208 months, with the amount of debt being \$5,201.00 as of February 11, 2022.

The Tenant's account statement submitted by the Landlord indicates that the total amount of rent owing by the Tenant up to and including the month of September 2022 is \$5,487.28. The statement indicates that the last payment received from the Tenant was \$376.00 received on May 27, 2022.

Analysis

1. Is the Tenant entitled to cancel the 10 Day Notice?

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 on July 13, 2022, I find the Tenant was served with the 10 Day Notice on July 13, 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 July 18, 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 July 18, 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 owed unpaid rent of \$5,487.28 to the Landlord up to and including September 2022. 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.

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.

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

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.

3. 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. I accept IC's testimony that the Tenant has not 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 October 7, 2022, rather than the effective date stated on the 10 Day Notice.

Based on the Landlord's undisputed evidence, I am satisfied that as at the date of the hearing, the Tenant owes \$5,562.02 in unpaid rent to the Landlord as follows:

Item	Amount
Unpaid Rent to September 30, 2022	\$5,487.28
Unpaid Rent from October 1, 2022 to October 7, 2022 (\$331.00 × 7 / 31 days)	\$74.74
Total	\$5,562.02

Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlord the sum of \$5,562.02.

Conclusion

The Tenant's application is dismissed in its entirety 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.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$5,562.02**. 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 11, 2022

Residential Tenancy Branch