



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, OPC**

Introduction

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act; and,
2. An Order of Possession for a One Month Notice to End Tenancy For Cause (the "One Month Notice") pursuant to Sections 47 and 55 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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 the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that she was not recording this dispute resolution hearing.

The Landlord provided proof of service for the following:

- the Landlord's 10 Day Notice served by posting on the Tenant's door on March 9, 2022, the Landlord uploaded a Proof of Service form #RTB-34, deemed served on March 12, 2022;

- the Landlord's Notice of Dispute Resolution Proceeding package personally served on the Tenant on June 23, 2022, the Landlord uploaded a sworn Affidavit of Service, served on June 23, 2022; and,
- the Landlord's One Month Notice were personally served on the Tenant on July 8, 2022, the Landlord uploaded a Proof of Service form #RTB-34, served on July 8, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that the Tenant was duly served with all the documents related to the hearing in accordance with the Act.

The Landlord stated she personally served her evidence package on the Tenant on October 5, 2022. The Landlord confirmed she did not include a 'Proof of Service' document for this package. Rules of Procedure 3.5 states:

3.5 Proof of service required at the dispute resolution hearing: At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

RTB Policy Guideline #12-Service Provisions assists parties understand the requirements of service of documents. Part 5 of RTB Policy Guideline #12 outlines service of documents generally. I find the Landlord has failed to provide any proof that the evidence was served on the Tenant by any method provided in Section 88 of the Act, and RTB Policy Guideline #12. I therefore decline to consider the Landlord's evidence package adequately served on the Tenant and will not consider it in my analysis for this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession for the One Month Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord uploaded a copy of the tenancy agreement and testified that this periodic tenancy began on December 1, 2019. Monthly rent is \$800.00 payable on the first day of each month. A security deposit of \$400.00 was collected late in April 2020. The Landlord still holds the security deposit.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$800.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was March 23, 2022.

The Landlord stated that the Tenant failed to pay rent not only in January 2022, but also failed to pay rent in the amount \$800.00 for January 2021, and \$400.00 for rent in November 2020.

The Landlord testified that one time the Tenant told the Landlord that she could keep the security deposit to go towards her outstanding rent. The Landlord did not agree to that suggestion as she wanted to hold onto the security deposit in case of damages to the rental unit.

The Landlord stated that the Tenant does not have permission from the Landlord to withhold rent, and the Tenant has not received an Order from an Arbitrator authorizing her to withhold rent. The Landlord is not seeking a Monetary Order for the outstanding rent, but is seeking an Order of Possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

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.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of 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].*
- ...
- (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 Landlord's 10 Day Notice was deemed served on the Tenant on March 12, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Based on the undisputed testimony of the Landlord, the Tenant still has not paid the outstanding rent amounts from January 2022, January 2021, and November 2020 totalling \$2,000.00. The Landlord testified that the Tenant does not have permission from the Landlord to withhold rent and the Tenant does not have an Arbitrator's Order to withhold rent. I find the Tenant did not dispute the 10 Day Notice and is conclusively presumed to have accepted that the tenancy ended on March 23, 2022. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession for unpaid rent. Section 55 of the Act reads as follows:

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.*

I previously found that the Tenant did not apply to dispute the 10 Day Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective two (2) days after service on the Tenant.

I find that the Tenant owes \$2,000.00 in outstanding rent. The Landlord is not seeking a Monetary Order for non-payment of rent pursuant to Section 55(4)(b) of the Act; however, pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the unpaid rent amount owing. If, after completion of the move-out condition inspection, there are outstanding damages, the Landlord can make an application for dispute resolution for those outstanding claims.

I find that the Landlord's claim for an Order of Possession for the One Month Notice is dismissed, as her 10 Day Notice was upheld, and an Order of Possession was granted for that valid claim.

Conclusion

The Landlord's 10 Day Notice is upheld, and I grant an Order of Possession to the Landlord effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

The Landlord's claim for an Order of Possession for the One Month Notice is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 21, 2022

Residential Tenancy Branch