



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNR-DR, OPR-DR, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on May 9, 2022 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

The Landlord, the Landlord's Interpreter S.T., the Landlord's Counsel S.L., and the Tenant attended the hearing at the appointed date and time.

The Tenant confirmed receipt of the Landlord's Application and documentary evidence. As there were no issues raised relating to service, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the Act. The Tenant confirmed that they did not submit any documentary evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on September 1, 2020. Rent in the amount of \$1,700.00 per month is due to the Landlord on the last day of each month. The Tenant paid a security deposit in the amount of \$850.00. The Tenant confirmed they continue to occupy the rental unit.

The Landlord testified the Tenant did not pay rent when due in January, February and March 2022 totalling \$5,100.00. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2022 (the "10 Day Notice") with an effective vacancy date of April 30, 2022. The Landlord testified they served the 10 Day Notice to the Tenant in person on March 2, 2022. The Landlord provided a witnessed proof of service in support.

The Landlord stated that since serving the 10 Day Notice, the Tenant has made no payments towards the outstanding balance of rent as shown on the 10 Day Notice. In addition, the Landlord testified that the Tenant also failed to pay rent when due for April, May, June, July, August, September, and October 2022. The Landlord stated that currently, rent in the amount of \$17,000 is outstanding.

The Tenant responded by stating that he is unsure if he received the 10 Day Notice. The Tenant stated that he thought he had a \$0 balance owing to the Landlord at the time of service. The Tenant stated that he and the Landlord had a verbal agreement where he would do some plumbing work, which the Tenant anticipated being worth approximately \$9,000.00. The Tenant also stated that he had paid the Landlord \$6,000.00 over 55 days. The Tenant acknowledged that he has not paid the Landlord any rent for the past 10 months.

The Landlord stated that the parties did not have an agreement relating to plumbing work. Furthermore, the Landlord stated that the Tenant's rent payments predate the 10 Day Notice being served and was applied to outstanding rent prior to January 2022. The Landlord referred to a detailed rent ledger in support.

The Landlord is seeking a monetary order for the unpaid rent in the amount of \$17,000.00. The Landlord is also seeking a 2-day order of possession relating to the unpaid rent. Lastly, the Landlord is seeking the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

I find that the Tenant has provided insufficient evidence to demonstrate that they performed plumbing work for the Landlord, or that the parties had an agreement where the Tenant would perform work for the Landlord, in lieu of paying rent. Furthermore, I find that the Tenant provided insufficient evidence to demonstrate that they paid rent to the Landlord which would have made the balance of rent owing \$0 at the time that the Landlord served the 10 Day Notice.

Instead, I accept the Landlord's evidence in form of a detailed rent ledger which shows all the rent payments made (not made) throughout the Tenancy. I find that the Tenant did not have a right to deduct any amount of rent and is in breach of Section 26 of the *Act*.

Section 46 of the *Act* states 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.

The Landlord served the Tenant with the 10 Day Notice in person on March 2, 2022. While the Tenant stated that they could not remember if they were served with the 10 Day Notice, I find based on the Landlord's evidence, and pursuant to sections 88 and

90 of the *Act*, the Tenant is deemed to have been served with the 10 Day Notice on March 2, 2022.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until March 7, 2022 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the parties agreed that the Tenant has not paid any rent to the Landlord for the past 10 months. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, April 30, 2022, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content, and I find that the Landlord is entitled to an order of possession effective **2 (two) days**, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of **\$17,000.00**. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$16,250.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$17,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$850.00</i>)

TOTAL:	\$16,250.00
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Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$16,250.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 18, 2022

Residential Tenancy Branch