



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given an opportunity to provide testimony and to present evidence. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent payable up to the date of the hearing. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began July 2016. The parties confirmed the current monthly rent is \$1950.00 payable on the 1st day of each month. The tenant paid a security deposit of \$900.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated July 5, 2022. The 10 Day Notice indicates an outstanding rent amount of \$1950.00 which was due on July 6, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice. The 10 Day Notice was served to the tenant by registered mail and the tenant confirmed receipt.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since.

The landlord's amended monetary claim is for outstanding rent in the amount of \$7800.00. The landlord testified that this includes unpaid rent as per below:

Item	Amount
July 2022	1950.00
August 2022	1950.00
September 2022	1950.00
October 2022	1950.00
Total Monetary Order Sought	\$7800.00

The tenant acknowledged service of the 10 Day Notice and that she did not pay the full amount of the rent arrears indicated, within five days, of receiving the Notice.

The tenant agreed to the amount of outstanding rent as claimed by the landlord but the tenant questioned how the landlord could have previously issued her a Two Month Notice.

The landlord confirmed the tenant was issued a Two Month Notice for Landlord's Use of Property at the end of May 2022. The landlord testified the effective date of the Two Month Notice was the end of July 2022. The landlord testified that after receiving the

Two Month Notice the tenant did not pay any rent for June or July 2022. The landlord has therefore applied the one month free to the month of June 2022.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I am satisfied that the tenant was served with the 10 Day Notice on July 11, 2022, five days after its mailing, pursuant to sections 88 & 90 of the Act. The tenant would have had until July 16, 2022 to pay the outstanding amount as per the 10 Day Notice which she failed to do.

I find that the 10 Day Notice complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that 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.

I find that the tenant was obligated to pay monthly rent in the amount of \$1950.00 but failed to pay rent for the months of July 2022 through to October 2022. I accept the landlord's claim for outstanding rent of \$7800.00.

The tenant's argument about the Two Month Notice was not relevant to this dispute. A landlord has a right under this Act to issue a Two Month Notice for Landlord's Use of Property and the tenant has a right under the Act to dispute the Notice if she feels it was issued incorrectly. The tenant does not have a right to withhold rent as she did.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$7900.00.

The landlord continues to hold a security deposit of \$900.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$7000.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of \$7000.00. 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 31, 2022

Residential Tenancy Branch