



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

On August 10, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the Landlord’s application for dispute resolution to a participatory hearing. She did so on the basis of an ex parte hearing using the Residential Tenancy Branch’s direct request process. The adjudicator adjourned the direct request for the following reasons:

I have reviewed all documentary evidence and I find that the tenants’ address on the residential tenancy agreement does not match the rental address on Application for Dispute Resolution or the 10 Day Notice.

I find that this discrepancy in the tenants’ address raises a question that can only be addressed through a participatory hearing.

This hearing dealt with the Landlord’s application under the Act for:

- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent dated June 7, 2022 (“the 10 Day Notice”) pursuant to section 55;
- a Monetary Order of \$4,800.00 for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord and the Landlord’s agent ZA attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. 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 the Landlord, ZA, and I were the only ones who had called into the hearing.

I advised the Landlord that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Confirmation of Dispute Address

The Landlord confirmed that there is a typographical error in rental unit address as stated on the tenancy agreement. The Landlord confirmed that the address for the rental unit as stated on the 10 Day Notice and this application is the correct address. I accept the Landlord’s undisputed testimony under oath that this is the case. I am satisfied that this resolves the Adjudicator’s concern in the interim decision dated August 10, 2022.

Preliminary Matter – Removal of Party

This application initially included a second respondent, DB. I have reviewed the tenancy agreement and find that DB did not sign the tenancy agreement as a tenant. The Landlord testified that DB is the Tenant’s boyfriend who moved into the rental unit several months ago.

Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants states:

TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

[...]

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Based on the Landlord's testimony, I find that that DB is an occupant and not a tenant of the rental unit. Pursuant to section 64(3) of the Act, I removed DB as a tenant and respondent in this application.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord testified that he served the Tenant with copies of the notice of dispute resolution proceeding package (the "NDRP Packages") via Xpresspost on August 14, 2022. The Landlord submitted tracking numbers in support (referenced on the cover page of this decision). Tracking records indicate that the NDRP Packages were delivered on August 16, 2022. Based on the foregoing, I find the Tenant was served with the NDRP Packages in accordance with section 89(2)(b) of the Act.

Preliminary Matter – Amendment of Landlord's Application

The Landlord testified that the Tenant is still residing in the rental unit. The Landlord testified that he had spoken with the Tenant and that the Tenant is aware of this hearing. The Landlord testified that the Tenant owes \$2,300.00 for unpaid rent accrued between January and March 2022. The Landlord testified that since then, the Tenant paid \$600.00 in April, \$600.00 in May, \$700.00 in June, \$1,700.00 in July, \$3,000.00 in August, \$400.00 in September, and nothing in October.

Based on the Landlord's testimony, I find that the Landlord is seeking an amendment to this application in order to request additional monetary compensation for use and occupancy of the rental unit by the Tenant since this application was made.

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.

Since the Tenant has not left the rental unit, I find the Tenant can reasonably anticipate the Landlord to seek additional payment for use and occupancy of the rental unit to the date of the hearing, or October 17, 2022. Accordingly, I allowed the Landlord to amend his application to include a monetary claim for compensation for overholding by the Tenant up to October 17, 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 by the Tenant?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

This tenancy commenced on June 1, 2020 and is month-to-month. Rent is \$1,700.00 due on the first day of each month. The Tenant paid a security deposit of \$800.00 which is held by the Landlord. A copy of the tenancy agreement has been submitted into evidence.

A copy of the 10 Day Notice has also been submitted into evidence. The 10 Day Notice is signed by the Landlord and has an effective date of June 17, 2022. The 10 Day Notice states that the Tenant failed to pay rent of \$5,500.00 due on June 1, 2022.

The Landlord testified that a copy of the 10 Day Notice was posted to the Tenant's door on June 7, 2022. The Landlord submitted a signed and witnessed Proof of Service document in support.

The Landlord confirmed the amounts owing by the Tenant. The Landlord confirmed the Tenant is still in the rental unit.

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 note that it is an older form from the Residential Tenancy Branch. Section 10(2) of the Act states that “Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.” I find that the 10 Day Notice contains the required information under section 52 of the Act and that any deviations do not affect the substance of the 10 Day Notice and are not intended to mislead. Therefore, I find the 10 Day Notice is a valid notice to end tenancy.

I accept the Landlord's undisputed evidence that a copy of the 10 Day Notice was posted to the Tenant's door on June 7, 2022. I find the Tenant was served with the 10 Day Notice pursuant to section 88(g) of the Act, and pursuant to section 90(c) of the Act, the Tenant is deemed to have received the 10 Day Notice on June 10, 2022.

Section 46(4) of the Act permits a tenant to dispute a 10 day notice to end tenancy for unpaid rent or pay the rent within 5 days after receiving such notice. Therefore, the Tenant had until June 15, 2022 to dispute the 10 Day Notice or pay the rent due.

Section 46(5) of the Act states that if a tenant who has received a notice under section 46 does not pay the rent or make an application for dispute resolution in accordance with section 46(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Furthermore, sections 55(2)(b) and 55(4) of the Act state 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.

In this case, I have found the 10 Day Notice was deemed served on June 10, 2022, the time for disputing the 10 Day Notice expired on June 15, 2022, and the Tenant did not pay the unpaid rent or make an application for dispute resolution. Accordingly, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, or June 17, 2022. I further find 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?

I accept the Landlord's undisputed testimony that that the Tenant owes \$2,300.00 in unpaid rent accrued between January and March 2022, and that since then the Tenant made partial payments of \$600.00 in April, \$600.00 in May, \$700.00 in June, \$1,700.00 in July, \$3,000.00 in August, and \$400.00 in September.

I find the Landlord is entitled to compensation for unpaid rent accrued up to the end of June 2022 under section 55(4)(b) of the Act, less payments received from the Tenant.

Pursuant to section 55(4)(b) of the Act, I order the Tenant to pay the Landlord \$400.00 in unpaid rent (calculated as $\$2,300.00 + \$1,700.00 \times 3 \text{ months} - \$600.00 - \$600.00 - \$700.00 - \$1,700.00 - \$3,000.00 - \$400.00$).

3. Is the Landlord entitled to compensation for overholding by the Tenant?

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 Landlord's testimony, 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 and including the date of the hearing.

I find that the Landlord is entitled to receive \$1,700.00 per month from the Tenant for use and occupancy of the rental unit.

Pursuant to section 57 of the Act, I order the Tenant to pay the Landlord \$6,032.26 as compensation for overholding from July 2022 to October 17, 2022 (calculated as $\$1,700.00 \times 3 \text{ months} + \$1,700.00 \times 17/31 \text{ days}$).

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 \$800.00 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
Balance of Unpaid Rent from January to March 2022	\$2,300.00
Rent Payable for April to June 2022 (\$1,700.00 × 3 months)	\$5,100.00
Less Payments Received from Tenant in April, May, and June 2022 (\$600.00 + \$600.00 + \$700.00)	- \$1,900.00
Less Payments Received from Tenant in July, August, and September 2022 (\$1,700.00 + \$3,000.00 + \$400.00)	- \$5,100.00
Compensation for Overholding from July 2022 to October 17, 2022 (\$1,700.00 × 3 months + \$1,700.00 × 17/31 days)	\$6,032.26
Filing Fee	\$100.00
Less Security Deposit	- \$800.00
Total Monetary Order for Landlord	\$5,732.26

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 \$800.00 security deposit in partial satisfaction of the total awarded in this application.

Pursuant to sections 55 and 57 of the Act, I grant the Landlord a Monetary Order in the amount of **\$5,732.26** 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 17, 2022

Residential Tenancy Branch