



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

While the landlord's agent, WM ("landlord"), attended the hearing by way of conference call, the tenants did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only one who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording the dispute resolution hearing by participants, and that the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. The landlord confirmed that they understood.

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 failed to attend the hearing for their application, **I order the tenant's entire application dismissed without leave to reapply.**

The landlord confirmed receipt of the tenant's application and evidentiary materials for this hearing. The landlord testified that they had served the tenant with their evidentiary materials by way of registered mail on November 2, 2022. The landlord provided proof of service in their evidence. In accordance with sections 88 and 90 of the Act, I find the tenant deemed served with the landlord's evidence on November 7, 2022, 5 days after mailing.

The landlord testified that the tenant was served with the 10 Day Notice dated October 7, 2022 by way of posting the 10 Day Notice on the tenant's door. In accordance with sections 88 and 90 of the Act, I find that the tenant deemed served with the 10 Day Notice on October 10, 2022, 3 days after posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Background and Evidence

This fixed term tenancy began on October, 4, 2019, and continued on a month-to-month basis after October 3, 2020. Monthly rent is currently set at \$1,263.67, payable on the first of the month. The landlord currently holds a security deposit of \$622.50 for this tenancy.

The tenant was served with a 10 Day Notice on October 7, 2022 for failing to pay the outstanding rent. The landlord testified the tenant has failed to pay the outstanding rent, and has not moved out. The landlord submitted supporting documents, including a ledger and a monetary order worksheet that states that the tenant owes \$2,527.35 in outstanding rent as of the hearing date. The landlord is seeking an Order of Possession, as well as a Monetary Order for the outstanding rent.

Analysis

Section 55(1) and (1.1) of the Act reads as follows:

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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, October 20, 2022. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$2,527.34 for the unpaid rent for this tenancy.

The landlord continues to hold the tenant's security deposit in the amount of \$622.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I issue a \$1,904.85 Monetary Order in favour of the landlord under the following terms:

Item	Amount
Unpaid Rent for October and November 2022	\$2,527.35
Less Security Deposit Held	-622.50
Total Monetary Order	\$1,904.85

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: November 14, 2022

Residential Tenancy Branch