



# 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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. The tenants did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's counsel submits that on October 7, 2022, copies of the Application for Dispute Resolution and Notice of Hearing were sent to both the tenants by registered mail. Registered mail tracking numbers were provided in support of service during the hearing (RN 683574575CA and RN 683574584CA).

Based on the above, I find the tenants to be deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

### **Preliminary Issue – Amendment to Landlord's Application**

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

At the hearing, the landlord testified that the tenant S.K. had not yet vacated the rental unit and therefore asked to amend the claim to include outstanding rent for October and

November 2022. Although the tenants did not have prior notice of this claim, I find that the tenants 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.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. I am exercising my discretion to dismiss the landlord's application pertaining to monetary compensation unrelated to rent with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### 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 landlord testified that this tenancy began approximately 5 ½ years ago. The rental unit is a townhouse. The tenants are the landlord's son and his ex-partner. The monthly rent is \$2700.00 payable on the 1<sup>st</sup> day of each month. A written tenancy agreement did not exist. No security deposit was collected at the start of the tenancy.

The landlord submitted a copy of a 10 Day Notice dated August 31, 2022. The 10 Day Notice indicates an outstanding rent amount of \$2700.00 which was due on August 1, 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 landlord's counsel submits that on September 1, 2022, the tenants were personally served the 10 Day Notice through a process server. An affidavit of service was submitted as evidence.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice. The landlord testified that no rent has been paid since.

The landlord's monetary claim is for outstanding rent in the amount of \$10,800.00. The landlord testified that this includes unpaid rent for the months of August, September, October and November 2022.

In addition to the above, the landlord submitted a mutual agreement to end tenancy which was signed by the tenant W.K. with an effective date of November 19, 2022. The landlord submits that although W.K. has vacated the unit, the tenant S.K. has not.

### 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 an end to the tenancy.

I am satisfied that the tenants were personally served with the 10 Day Notice on September 1, 2022. The tenants would have had until September 6, 2022 to pay the outstanding amount as per the 10 Day Notice or dispute the Notice which they failed to do.

I find that the Notice issued by the landlord 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 accept the landlord's uncontested testimony and claim for outstanding rent of \$10,800.00.

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 \$10,900.00.

### Conclusion

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

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,900.00. Should the tenants 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 29, 2022

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Residential Tenancy Branch