



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on May 26, 2022 (the “10-Day Notice”);
- an order pursuant to s. 67 for unpaid rent; and
- return of its filing fee pursuant to s. 72.

E.B. appeared as agent for the Landlord. The Tenant did not attend, nor did someone attend on their behalf.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent testified that the 10-Day Notice was served on the Tenant via Xpresspost with signature option sent on May 26, 2022. The agent further testified that the package was received. The Landlord’s evidence includes the registered mail tracking receipt as proof of service, which indicates the 10-Day Notice was received on May 30, 2022. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. I further find, as evidenced by the tracking information, that the 10-Day Notice was received on May 30, 2022.

The Landlord’s agent further testified that the Notice of Dispute Resolution and the Landlord’s initial evidence was served via registered mail sent on July 7, 2022 and that a second evidence package was served via registered mail on October 13, 2022. Tracking information was provided by the Landlord and the agent testified that the

packages were retrieved by the Tenant. I find that the Landlord's application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the first package on July 12, 2022 and the second on October 18, 2022.

An updated rent ledger was provided to the Residential Tenancy Branch on October 30, 2022. I enquired whether it had been served on the Tenant. The Landlord's agent testified that it had not but that there was an updated ledger from October 1, 2022 that was served in the second evidence package. As the most recent rent ledger provided to the Residential Tenancy Branch on October 30, 2022 was not served, it is not included and shall not be considered by me.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Preliminary Issue – Amending the Landlord's Claim

The Landlord's agent testified that the Landlord was seeking additional unpaid rent in the months that followed filing the application. Rule 4.2 of the Rules of Procedure permits amendments of an application at a hearing in circumstances that can be reasonably anticipated, citing as an example the amount of rent owing having increased due to the passage of time.

I find that the Tenant could have reasonably anticipated an increase to the Landlord's unpaid rent claim such that it is appropriate to amend the Landlord's claim to permit it to seek the additional amounts.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit on March 31, 2021.
- Rent of \$1,845.27 is due on the first day of each month.
- The Tenant paid a security deposit of \$909.00 to the Landlord.

The Landlord's evidence includes a copy of the tenancy agreement. At the hearing, the Landlord's agent testified that rent increased to the amount listed above effective on April 1, 2022.

The Landlord's agent testified that the 10-Day Notice was issued on the basis that the Tenant had failed to pay rent at all in April and May 2022. The agent confirmed that the Landlord did not receive an application from the Tenant disputing the 10-Day Notice nor did the Tenant pay out the listed arrears.

The Landlord's agent indicated that, in addition to the months of April and May 2022, the Tenant failed to pay rent at all from June 2022 to date and seeks for those months. The Landlord's evidence includes a ledger indicating the Tenant made a payment of \$218.00 in June 2022. At the hearing, the Landlord's agent testified that this payment was in relation to a fee charged due to a lost key.

The Landlord's agent further testified the Landlord seeks two NSF charges of \$25.00 for the months of July and August 2022 due to cheques issued by the Tenant being returned for insufficient funds. The tenancy agreement includes an addendum, which imposes the \$25.00 fee under clause 20.

The Landlord's agent confirmed the Tenant continues to reside within the rental unit.

Analysis

The Landlord seeks an order for unpaid rent and an order of possession after serving the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from received a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either repay the overdue rent or file an application to dispute the notice. This is made clear at the very top of the 10-day notice to end tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, I accept the undisputed testimony from the Landlord's agent that the Tenant failed to pay rent at all in the months of April and May 2022 and neither paid the outstanding amount nor filed a dispute of the 10-Day Notice within 5 days of receiving it. Though total arrears for two months, being \$3,690.54, exceeds the unpaid rent listed as being due in the 10-Day Notice, I accept that rent was owed which went unpaid. I find that this discrepancy is not material under the circumstances.

As the Tenant failed to either pay the overdue rent or dispute the 10-Day Notice, s. 46(5) of the *Act* comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, rent was not paid in accordance with the tenancy agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the tenancy agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

The Landlord's ledger for June 2022 indicates that the Tenant made two payments, the first for \$35.00 and the second for \$183.90. The ledger indicates that the first payment was made to replace a suite key and laundry card, the second for payment of a locksmith. This was confirmed by the Landlord's agent at the hearing. Accordingly, I accept that there was no partial rent payment in June 2022.

I accept the undisputed testimony of the Landlord's agent that rent increased to \$1,845.27 on April 1, 2022, which would correspond with the one-year anniversary for the beginning of the tenancy.

I further accept the undisputed testimony of the Landlord's agent and find that rent was unpaid as follows:

Month	Rent Due	Rent Paid	Rent Owed
April 2022	\$1,845.27	\$0.00	- \$1,845.27
May 2022	\$1,845.27	\$0.00	- \$1,845.27
June 2022	\$1,845.27	\$0.00	- \$1,845.27
July 2022	\$1,845.27	\$0.00	- \$1,845.27
August 2022	\$1,845.27	\$0.00	- \$1,845.27
September 2022	\$1,845.27	\$0.00	- \$1,845.27
October 2022	\$1,845.27	\$0.00	- \$1,845.27
November 2022	\$1,845.27	\$0.00	- \$1,845.27
Total Rent Owed			\$14,762.16

I further accept that the Tenant provided two cheques in July and August 2022 which were returned for insufficient funds, as evidenced in the rent ledger the Landlord provided. This triggered clause 20 of the tenancy agreement addendum. I find that the Landlord is entitled to \$50.00 for administrative fee imposed by clause 20 of the tenancy agreement.

I find that the Landlord could not have mitigated its damages under the circumstances as the Tenant continues to reside within the rental unit. Accordingly, I find that the Landlord has established a monetary award totalling \$14,812.16 (\$14,762.16 + \$50.00).

Conclusion

The Landlord is entitled to an order of possession pursuant to s. 55 of the *Act*. I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord has established an entitlement to \$14,812.16 for unpaid rent under s. 67 of the *Act*.

I find that the Landlord was successful in its application and is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$14,912.16** to the Landlord (\$14,812.16 + \$100.00).

It is the Landlord's obligation to serve the monetary order and the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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 03, 2022

Residential Tenancy Branch