



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, FFT

Landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The tenant applied on October 17, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, not submitted as evidence; and
- recovery of the filing fee.

The landlord applied on October 21, 2022 for:

- an order of possession, having served a 10 Day Notice dated September 21, 2022 (the 10 Day Notice), and a second 10 Day Notice dated October 8, 2022 (the October 10 Day Notice);
- a monetary order for unpaid rent; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling a 10 Day Notice?
- 2) Is the tenant entitled to the filing fee?

- 3) Is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 4) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began December 1, 2016; rent is \$1,370.25, due on the first of the month; and the tenant paid a security deposit of \$675.00 and a pet damage deposit of \$250.00, which the landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated September 21, 2022 by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$700.00, due on September 21, 2022.

The parties agreed the 10 Day Notice was served on the tenant in person on September 21, 2022.

A copy of the October 10 Day Notice was submitted as evidence by the landlord. It is signed and dated October 8, 2022 by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$2,065.00 due on October 1, 2022.

The landlord testified the October 10 Day Notice was served on the tenant in person on October 8, 2022. The tenant testified she was not sure on what date she received the October 10 Day Notice, but that it was after receiving the September 10 Day Notice.

The tenant testified that the copy of the second 10 Day Notice she received was not signed or dated by the landlord. The landlord testified it was possible he accidentally served the wrong copy of the October 10 Day Notice on the tenant, serving her with an unsigned and undated copy.

The parties agreed that the tenant made rent payments as follows:

Month	Rent	Rent paid	Monthly outstanding
September 2022	\$1,370.25	\$675.00 on Sept 9 \$695.25 on Sept 30	\$0.00
October 2022	\$1,370.25	\$0.00	\$1,370.25
November 2022	\$1,370.25	\$0.00	\$1,370.25
December 2022	\$1,370.25	\$0.00	\$1,370.25
Total			\$4,110.75

The tenant testified that for the last four years the landlord had permitted her to pay a portion of the rent biweekly.

The landlord testified that he had permitted the tenant to pay a portion of the rent biweekly, but that he had spoken with her in March 2022, telling the tenant she had to go back to paying rent on the first of the month. This was not disputed by the tenant.

Analysis

Section 52 of the Act states that in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice.

As the parties agree the copy of the October 10 Day Notice served on the tenant was not signed or dated, I cancel the October 10 Day Notice as I find it is not effective, pursuant to section 52 of the Act.

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, pay the overdue rent, in which case the notice has no effect, or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Based on the testimony of the parties, I find the 10 Day Notice was served on the tenant in person on September 21, 2022, in accordance with section 88 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

In the hearing the parties agreed that rent is due on the first of the month.

I find that the tenant failed to pay the overdue rent or file an application for dispute resolution within 5 days of September 21, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the effective date of the 10 Day Notice, October 1, 2022, and must vacate the rental unit.

The parties agreed that the tenant did not pay rent for October, November, or December 2022.

In accordance with section 55 of the Act, I find that the landlord is entitled to an order of possession and a monetary award for outstanding rent in the amount of \$4,110.75.

As the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, December 9, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is unsuccessful in her application, I decline to award her the filing fee. As the landlord is successful in his application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72, I allow the landlord to retain \$925.00 of the tenant's security and pet damage deposits in partial satisfaction of the monetary award.

I find the landlord is entitled to a monetary order as follows:

Outstanding rent	\$4,110.75
Filing fee	\$100.00
Less the security and pet damage deposits	-\$925.00
Owed to landlord	\$3,285.75

Conclusion

The tenant's application is dismissed.

The landlord's application is granted.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order

of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$3,285.75. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 12, 2022

Residential Tenancy Branch