



Dispute Resolution Services

Page: 1

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 1, 2022 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of their filing fee pursuant to s. 72.

K.L. appeared as the Landlord’s agent. The Tenant did not attend, nor did someone attend on the Tenant’s 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 Landlord’s Notice of Dispute Resolution and evidence was served on the Tenant by posting it to his door on or about July 27, 2022. The Landlord’s agent later clarified that the Landlord’s application materials were sent via registered mail to the Tenant. I was provided with a tracking number, indicating it was sent on July 23, 2022 and delivered on July 26, 2022. The Landlord’s agent testified that after he communicated with the Tenant about these dispute proceedings after the package was delivered such that the Landlord’s agent was certain the Tenant was aware of the proceedings.

Based on the undisputed testimony of the Landlord’s agent, which is supported by the tracking number listed on the cover page of this decision, I find that the Landlord’s application materials were served in accordance with s. 89 of the *Act*.

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.

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 their 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 moved into the rental unit on March 1, 2020.
- Rent of \$600.00 is due on the first day of each month.

The Landlord's agent further advised that the Tenant rents a room within the rental unit and that the Landlord rents out the other rooms individually. The Landlord's agent confirmed that the Landlord does not reside in the rental unit.

The Landlord's agent testified that the Landlord served the 10-Day Notice on the Tenant by posting it to his door on May 1, 2020. The Landlord's evidence includes a photograph showing the 10-Day Notice left in front of the Tenant's door.

I have been provided with a copy of the 10-Day Notice by the Landlord. In it, it lists that the Tenant failed to pay \$3,600.00 on May 1, 2022. The Landlord's agent testified that when the 10-Day Notice had been served, the Tenant had failed to pay rent from December 1, 2021 onwards. The Landlord's agent further confirmed that the Tenant has not made any rent payments since the 10-Day Notice was served nor to the agent's knowledge has the Tenant filed a dispute seeking to cancel the 10-Day Notice.

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

Analysis

The Landlord seeks an order of possession and an order for unpaid rent.

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.

I accept the undisputed testimony from the Landlord's agent that the 10-Day Notice was left at the Tenant's door on May 1, 2022. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on May 6, 2022.

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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). As the 10-Day Notice was deemed to have been received on May 6, 2022, the effective date of the notice is automatically corrected to May 16, 2022 pursuant to s. 53 of the *Act*.

Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either pay 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 Landlord's undisputed evidence that the Tenant did neither. Given this, I find that 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. 55 of the *Act*.

The Landlord also seeks an order for unpaid rent. 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.

Rule 2.2 of the Rules of Procedure limits claims to what is stated in the application, which in this case shows the Landlord seeks a monetary award for \$4,800.00. However, Rule 4.2 of the Rules of Procedure permits amendments to a claim in circumstances that can be reasonably anticipated, such as when “the amount of rent owing has increased since the time the Application for Dispute Resolution was made”. Accordingly, I permit the Landlord to seek the additional unpaid rent 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, I accept the undisputed evidence from the Landlord’s agent 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. To be clear, I draw no distinction between unpaid rent or compensation in lieu of rent owed for the period in which the Tenant has been overholding since May 16, 2022 as the claim for damages arises from the Tenant’s continued breach of the tenancy agreement and the *Act*.

I accept the Landlord’s undisputed evidence that the Tenant has not paid rent from December 1, 2021 to date. The hearing took place on December 1, 2022, which presumably gave the Tenant until the end of that day to pay rent. Given this, I do not find that rent owed for December 1, 2022 ought to be granted as part of this application, though should the Tenant have failed to pay this amount, the Landlord may seek it by filing a separate application. As the Tenant continues to reside within the rental unit, I find that the Landlord could not have mitigated its damages.

Accordingly, I find that the Landlord has demonstrated it is entitled to an order for unpaid rent totalling \$7,200.00 (December 1, 2021 to November 30, 2022).

Conclusion

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

The Landlord is entitled to an order for unpaid rent pursuant to s. 67 of the *Act* totalling \$7,200.00.

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

It is the Landlord's obligation to serve the order of possession and monetary order 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: December 02, 2022

Residential Tenancy Branch