



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, OLC, FFT, OPC, FFL, CNR, OLC, FFT, OPR-DR, MNR-DR,
FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On August 12, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 19, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 12, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 22, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 6, 2022, the Landlord made an amendment to the Application for Dispute Resolution seeking to increase the amount of monetary compensation being sought pursuant to Section 67 of the *Act*.

W.Y. and C.E. attended the hearing as agents for the Landlord; however, the Tenant did not attend the hearing at any point during the 31-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:31 AM. Only representatives for the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that representatives for the Respondent were the only other persons who had called into this teleconference.

As the Tenant has not attended this hearing, the Tenant's Applications are dismissed without leave to reapply.

C.E. advised that the Tenant was served the first Notice of Hearing and evidence package by attaching it to the Tenant's door, and by sending it via registered mail on September 9, 2022. Based on this undisputed testimony, and in accordance with Section 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received these packages. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

C.E. advised that the Tenant was served the second Notice of Hearing package by attaching it to the Tenant's door, and by sending it via registered mail on October 6, 2022. W.Y. confirmed that this was received by the Tenant as she responded to it by email on December 15, 2022. Based on this undisputed testimony, and in accordance with Section 89 and 90 of the *Act*, I am satisfied that the Tenant, more likely than not, has been deemed to have received these packages in October 2022.

C.E. then advised that the Tenant was served the Landlord's Amendment and evidence package by sending it via registered mail on December 6, 2022, and by attaching it to the Tenant's door on December 7, 2022. Given the manner with which these documents were served, and how late they were served, I am not satisfied that they would have been deemed to have been received in accordance with the timeframe requirements of Rule 4.6. of the Rules of Procedure. As such, I have not accepted this Amendment or this evidence, and I will not consider this documentary evidence when rendering this Decision.

However, as the Tenant disputed the Notice, the issue of an Order of Possession and a Monetary Order for unpaid rent may still be considered, pursuant to Section 55 of the *Act*, if I am satisfied of the validity of the Notice. W.Y. and C.E. were afforded with an opportunity to provide testimony with respect to the evidence submitted.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's notices cancelled?
- If the Tenant is unsuccessful in cancelling the notices, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fees?
- Is the Landlord entitled to recover the filing fees?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

C.E. advised that the tenancy started on July 1, 2021, that the rent was currently established at an amount of \$1,776.25 per month, and that it was due on the first day of each month. A security deposit of \$875.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She then advised that the One Month Notice to End Tenancy for Cause was served to the Tenant by attaching it to the Tenant's door, and by sending it via registered mail on August 3, 2022. The reasons the Landlord served the Notice were because, the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant", because the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the Landlord gave the written notice to do so, and because the Tenant has not paid a pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. As well, the effective end date of the tenancy was noted on this notice as September 30, 2022.

C.E. advised that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenant by attaching it to the Tenant's door on September 8, 2022, and a signed proof of service document was submitted as documentary evidence to corroborate service. The Notice indicated that \$4,538.75 was owing for rent on September 1, 2022; however, she indicated that this was calculated as \$2,647.50 as outstanding on August 1, 2022, and \$1,776.25 owing for rent on September 1, 2022. When she was asked why these amounts did not total the amount noted on the Notice, she stated that this was because the amount on the Notice included late fees and storage fees. The effective end date of the tenancy was noted on the Notice as September 20, 2022.

She testified that the Tenant continually had a running balance of rent outstanding and in addition to the amount outstanding above, the Tenant had not paid any rent for

October, November, and December 2022. She stated that the Tenant did not have any authority under the *Act* or any permission from the Landlord to withhold any rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing the Notice, I acknowledge that the Landlord indicated the incorrect amount of rent owing on September 1, 2022, because late fees and storage fees were included. However, I accept that \$2,647.50 was owed on August 1, 2022, and that the Tenant did not pay any rent for September 2022.

The consistent and undisputed evidence before me is that the Tenant was served the Notice on September 8, 2022, by attaching it to the door. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that "*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to*

have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”

As the Notice was attached to the door on September 8, 2022, this was deemed to have been received on September 11, 2022. As such, the Tenant must have paid the rent in full or disputed the Notice by September 16, 2022, at the latest. While the Tenant disputed the Notice, she did not attend the hearing and her Application was dismissed without leave to reapply.

Furthermore, while I am satisfied that the amount of rent indicated on the Notice was incorrect, as the Tenant had made no rental payments at all, I find that it is obvious that some rent was still owing. Given that there is no evidence before me that the Tenant made any efforts to pay any rent that she believed was still owing, in an attempt to cancel the Notice, I find that this was a valid Notice. As there is no evidence before me that the Tenant had any authority under the *Act* to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55(1) of the *Act*. As such, I grant the Landlord an Order of Possession that takes effect on **December 31, 2022, at 1:00 PM** after service of this Order on the Tenant.

Moreover, regarding the Landlord's claims for monetary compensation, as noted above, Section 55(1.1) permits a claim for monetary compensation to be awarded when a Tenant's Application to dispute the Notice is dismissed. As a result, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$9,752.50** for the outstanding rental arrears up until December 31, 2022.

As the tenancy has been determined to have ended due to the 10 Day Notice to End Tenancy for Unpaid Rent, there was no need to consider the merits of the One Month Notice to End Tenancy for Cause.

As the Tenant's Applications were dismissed without leave to reapply, the Tenant is not entitled to recover the \$100.00 filing fees.

As the Landlord was successful in these Applications, I find that the Landlord is entitled to recover the \$100.00 filing fees.

Pursuant to Sections 55 and 67 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears as of August 1, 2022	\$2,647.50
Rental arrears for September 2022	\$1,776.25
Rental arrears for October 2022	\$1,776.25
Rental arrears for November 2022	\$1,776.25
Rental arrears for December 2022	\$1,776.25
Filing Fee	\$100.00
Total Monetary Award	\$9,852.50

Conclusion

The Tenant's Applications for Dispute Resolution are dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective on **December 31, 2022, at 1:00 PM after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$9,852.50** in the above terms, and 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: December 23, 2022

Residential Tenancy Branch