



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR CNL OLC FF
Landlord: OPR MNR FF

Introduction

This hearing was convened as a result of a cross Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 13, 2023. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

I will first deal with the Tenant's application.

The Landlord attended the hearing and provided affirmed testimony. However, the Tenants did not. The hearing was by telephone conference and began promptly, as scheduled, at 11:00 a.m. Pacific Time on January 13, 2023, as per the Notice of a Dispute Resolution Hearing. The line remained open while the phone system was monitored for 25 minutes and the only participant who called into the hearing during this time was the Landlord who was ready to proceed. The Landlord testified that the Tenants have not vacated the suite yet and have not yet returned the keys.

Since the Tenants failed to attend the hearing, both of their applications are **dismissed, in full, without leave to reapply**.

I note that the Tenant's applied to cancel the Landlord's 2-Month Notice (the 2 Month Notice), as well as applying to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). However, as stated above, they failed to attend the hearing and their application is dismissed. With respect to an order of possession, Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a 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.

I find the 10 Day Notice issued on November 16, 2022, complies with section 52 of the *Act*, in terms of the form and content requirements. As such, I find the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. This order will be effective 2 days after it is served on the Tenants.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed.

The Landlord testified that monthly rent is \$1,600.00, and is due on the 15th of the month. The Landlord confirmed that the Tenants did not pay rent for the monthly period October 15, 2022 - November 14, 2022, and they also didn't pay rent for the period December 15, 2022 - January 14, 2023. The Landlord further acknowledged serving them with a 2 Month Notice in August 2022. I find the corrected effective date of that 2 Month Notice is November 14, 2022. I turn to the following portion of the Act:

***51 (1)** A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

I find the Tenants are not responsible for paying rent for October 15 – November 14, 2022, as this would be the free month's rent pursuant to section 51(1). However, I find they are responsible for paying rent for the period from December 15, 2022 – January 14, 2023. Further, pursuant to section 72 of the Act, I award the Landlord the filing fees they paid (\$100.00 x 2) for both of their applications that were set to be heard as part of this proceeding, as they were both for related matters.

In summary, I award the Landlord \$1,800.00 for outstanding rent and the filing fees paid.

Conclusion

Pursuant to section 55 of the Act, the Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,800.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: January 13, 2023