



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creative Social Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This review hearing was convened in response to a review consideration decision granted pursuant to section 79 of the *Act* on (insert date). The review consideration decision determined that the tenant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the tenant's control.

This hearing presently before me dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- for an order of possession pursuant to section 55 of the Act
- for a monetary order pursuant to section 67 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord appeared through agents AG and JG. The tenant appeared through agent LL. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?

2. Is the landlord entitled to a monetary order for compensation?
3. Is the landlord entitled to recover the filing fee for the application?

Background and Evidence

The tenancy commenced August 15, 2020. Rent was \$150.00 per month due on the first of the month. The landlord also holds a security deposit in the amount of \$250.00.

The landlord testified that they served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated September 2, 2022 with an effective date of October 31, 2022, for \$507.50 in unpaid rent. The notice was served by registered mail. The landlord provided a proof of service form in evidence stating that the 10 Day Notice was mailed on September 2, 2022 to the address of the rental unit. The landlord also provided a Canada Post receipt and tracking number in evidence. The landlord confirmed that the 10 Day Notice was sent to the address of the rental unit. The landlord also provided the tenancy agreement in evidence. The only address provided on the tenancy agreement by the tenant is the address of the rental unit.

The tenant disputed receiving the 10 Day Notice and stated that she did not become aware of it until she contacted the RTB at the end of November 2022. The tenant acknowledged living in the rental unit from August 20, 2020 until September 23, 2022, at which point she alleges she was locked out of the residence by the landlord. The tenant specifically acknowledged that she was living in the residence during the time the 10 Day Notice was served in September 2022.

RTB Policy Guideline 12 states in part:

Unless there is evidence to the contrary, a document is considered or 'deemed' received:

- if given or served by mail (ordinary or Registered Mail/Express Post with signature option), on the fifth day after mailing it;

The tenant provided no credible explanation or any proof as to why she had not received the 10 Day Notice. I therefore find that the tenant is deemed to have been served with the 10 Day Notice on September 7, 2022 pursuant to sections 89 and 90 of the Act.

The landlord also stated that they served the dispute notice and supporting materials for the review hearing, on the tenant, on November 25, 2022 and also on December 4, 2022. Included in the November 25, 2022 package was the September 2, 2022 10 Day Notice. The tenant acknowledges receiving the dispute notice and landlord's evidence package.

The landlord acknowledged receiving the tenant's evidence package.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here. The landlord confirmed that as of the date that the 10 Day Notice was served, the tenant owed \$507.50 in unpaid rent. The landlord still wishes to enforce the 10 Day Notice and seeks an order of possession for the rental unit.

The 10 Day Notice sets out for the benefit of the tenant that the 10 Day Notice would be cancelled if the rent was paid within five (5) days. The 10 Day Notice also explained that alternatively the tenant had five days to dispute the 10 Day Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the 10 Day Notice or paid rent within five days of receiving the 10 Day Notice.

I find the landlord submitted sufficient evidence to prove that the tenant was served the 10 Day Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the 10 Day Notice within five days of service. The landlord did not make an application to amend the 10 Day Notice despite having re-served it on the tenant on November 25, 2022.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, or October 31, 2022.

As a result, I order the tenancy ended on October 31, 2022, and I grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant. Under section 55(1.1) the landlord is entitled to a monetary order in the amount of \$507.50 for unpaid rent.

Having been successful in their application the landlord is also entitled to recover the \$100.00 filing fee for the application.

Conclusion

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 in and enforced as an order of the Supreme Court of British Columbia.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$250.00 in partial satisfaction of the unpaid rent owed. The landlord is entitled to a monetary order in the amount of \$357.50 in satisfaction of the remainder of the unpaid rent as well as the filing fee as follows:

| | |
|------------------|-----------------|
| Unpaid rent | \$507.50 |
| Filing fee | \$100.00 |
| Security deposit | (\$250.00) |
| Total | \$357.50 |

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 18, 2023

Residential Tenancy Branch