



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Landlord: OPR-DR, MNR-DR
Tenant: CNR, MNDCT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent or money owed pursuant to section 67.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that on October 5, 2022, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenant by way of registered mail. The landlord provided the tracking information which show the package was received on October 7, 2022. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with copies of the landlord's application and evidence on October 10, 2022, 5 days after mailing.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice by posting the Notice on the tenant's door on September 9, 2022. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on September 12, 2022, 3 days after posting.

Although the landlord had applied for a monetary Order of \$1,050.00 in their initial claim for unpaid rent, since they applied another \$4,199.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$1,050.00 to \$5,249.99 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on January 8, 2022. The landlord testified that the monthly rent was set at \$1,050.00, and as noted on the written tenancy agreement, the tenant is also responsible for prepaying \$100.00 per month for utilities. The landlord also confirmed that the security deposit was \$525.00 as noted on the tenancy agreement.

The landlord testified that the tenant was served with a 10 Day Notice for Unpaid Rent on September 9, 2022 for failing to pay the September 2022 rent. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was served, with the exception of one penny, which the landlord had informed the tenant was for use and occupancy only.

The landlord testified that the tenant now owes the entire monthly rent for the months of September 2022 through to January 2023, minus the one penny that has been paid. The landlord is seeking an Order of Possession as well as monetary order for the unpaid rent.

Analysis

Section 55(1) of the *Act* reads as follows:

- 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.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, September 22, 2022. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I am satisfied that the monthly rent is set at \$1,050.00, payable on the first of the month. In addition, the written tenancy agreement notes that the tenant is to prepay \$100.00 each month to be applied towards utilities. I am satisfied that the landlord had provided sufficient evidence to show that the tenant has not paid any rent for the months of September 2022 to January 2023 with the exception of one penny. Therefore, I find that the landlord is entitled to \$5,249.99 in arrears for the above period.

The landlord continues to hold the tenant's security deposit in the amount of \$525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$4,724.99 Monetary Order in favour of the landlord under the following terms:

Item	Amount
Unpaid Rent for September 2022 to January 2023	\$5,250.00

Rent paid (for use and occupancy only)	-0.01
Less Security Deposit Held	-525.00
Total Monetary Order	\$ 4,724.99

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: January 27, 2023

Residential Tenancy Branch