



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: CNR, RR, RP, LRE, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:12 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 am. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording the dispute resolution hearing by participants, and that the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. 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.

Accordingly, **in the absence of any submissions in this hearing from the applicant, I order the entire application dismissed without leave to reapply.**

The landlord confirmed receipt of the tenant's application and evidentiary materials for this hearing.

The landlord testified that the tenant was personally served with the 10 Day Notice dated January 6, 2023 on the same date. In accordance with section 88 of the *Act*, I find that the tenant duly served with the 10 Day Notice on January 6, 2023.

I note that neither party submitted a copy of the 10 Day Notice to End Tenancy for this hearing. I note that RTB Rules of Procedure 3.19 states that no additional evidence may be submitted after a dispute resolution hearing starts, except as directed by the arbitrator. In this case, I ordered that the landlord submit a copy of the 10 Day Notice dated January 6, 2023 by the end of the day, which the landlord complied with. I did this for the purpose of reviewing the document to ensure that the document is valid, and complies with section 52 of the *Act*. My decision took in consideration the fact that this application was filed by the tenant pertaining to that 10 Day Notice, and I did not find it prejudicial to either party to allow this document to be submitted after the hearing considering the fact that the tenant already has a copy. I also did not find it necessary for a copy of this document to be served on the tenant for the same reason.

Section 55(1) and (1.1) of the *Act* reads as follows:

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.

As noted above, I ordered that the landlord submit a copy of the 10 Day Notice, dated January 6, 2023, after the hearing. Section 52 of the *Act* states that the Notice must: be in

writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 10 of the Act states the following about the Director's authority to approve forms:

- 10** (1) The director may approve forms for the purposes of this Act.
(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

I note that although the landlord did serve the tenant with the 10 Day Notice to End Tenancy using an older version of the form, I do not find that using this older version affects its substance, nor do I find that this older form was used with the intention to mislead. For this reason, I exercise my authority under section 10 of the *Act* to approve the use of this form by the landlord. I find that the 1 Month Notice complies with the form and content provisions of 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, January 16, 2023. 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.

The landlord testified in the hearing that the tenant has not paid the outstanding rent of \$2,150.00 since the 10 Day Notice was served on the tenant. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$2,150.00 for the unpaid rent stipulated on the 10 Day Notice.

A security deposit of \$1,075.00 is being held for this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's security deposit plus applicable interest in satisfaction of the monetary award granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$3.16 is payable as interest on the tenant's security deposit from the beginning of this tenancy until the date of this decision, February 24, 2023.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. 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.

I issue a **\$1,071.84** Monetary Order in favour of the landlord under the following terms:

Item	Amount
Unpaid Rent for January 2023 as noted on the 10 Day Notice	\$2,150.00
Less Security Deposit Held plus applicable interest	-1,078.16
Total Monetary Order to Landlord	\$1,071.84

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: February 24, 2023

Residential Tenancy Branch