



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, RR, RP, PSF, LRE
OPU-DR, MNU-DR, FFL
OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (“10-Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing dealt with a second application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (“10-Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing commenced at the scheduled time of 9:30 AM with the landlord present. The hearing process was explained. The landlord stated he was not recording the hearing. The landlord confirmed the email address to which the Decision and any Orders shall be sent.

At 9: 41 AM, the tenants joined the hearing with their agent CC (“the tenant”). The hearing process was explained.

The tenant then had opportunity to provide affirmed testimony, present evidence and make submissions until they disconnected from the hearing 11 minutes later.

1. Service by Landlord

The tenant acknowledged receipt of the landlord’s Application for Dispute Resolution and Notice of Hearing.

Further to the evidence of the parties and the acknowledgement of the tenant, I find the landlord served the tenant in compliance with the Act.

2. Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states 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.

3. Settlement Agreement - Order of Possession

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

This settlement agreement was reached in accordance with section 63.

Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a Decision:

The parties agreed as follows:

1. The tenancy between the parties will end at 1:00 PM on February 3, 2023, by which time the tenant and any other occupants will return vacant possession of the rental unit to the landlord.

In support of this settlement and with the agreement of both parties, I grant the landlord the following:

Order of Possession effective 1:00 PM on February 3, 2023

Should either party violate the terms of this agreement, the tenancy agreement, or the *Act*, it is open to the other party to take steps under the *Act* for an appropriate remedy. Should the parties fail to comply with these Order(s), the Order(s) may be filed and enforced as Order(s) of the Courts of British Columbia.

This settlement agreement was reached in accordance with section 63 of the *Act*. Each party stated they understood and agreed to the terms of this settlement. The settlement was fully discussed by the parties in the hearing. The parties testified they understood and agreed the above terms are final, binding, and enforceable, and settle all aspects of this application.

The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the *Act*.

2. Service by Tenant

The landlord stated he had not received any documents from the tenant.

The tenant stated they had sent the landlord the Application for Dispute Resolution and Notice of Hearing by registered mail. However, the tenant was unable to provide the tracking number. The tenant had not submitted any receipt of documentary evidence of having sent the documents to the landlord.

I find the tenant has failed to establish they served the landlord as required under the *Act*.

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

3. Behaviour of the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

As stated earlier, both tenants attended with their agent CC, who was introduced as the sister of one of the tenants. They all joined the hearing 21 minutes after it started. They exited by loud complaints and threats to apply. They disconnected at 9:52 AM, 11 minutes after joining the hearing.

The tenants agreed to an Order of Possession in favour of the landlord.

During the short time they attended the hearing, the tenants and agent all spoke loudly and repeatedly interrupted me much of the time. They informed me they had many allegations of wrongdoing against the landlord. They told me several times they planned to appeal any decision I made to the BCSC, except for the Order of Possession. They refused to stop talking when I asked them to do so. I threatened to mute them if they did not act respectfully.

After agreeing to the Order of Possession, the issue of outstanding rent and utilities was raised. They refused to discuss what rent/utilities remained owing. The tenants loudly said they were "going to the Supreme Court" and suddenly all disconnected from the call.

The tenants and agent did not rejoin the call.

According, the hearing continued without the tenants being present and ended at 10:12 AM.

4. Request for Amendment by Landlord

The landlord requested an amendment to the landlord's application, so the landlord is authorized to apply the security deposit and the pet deposit to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit and a pet deposit for a total of \$3,400.00 at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the security deposit and pet deposit in the total amount of \$3,400.00 be applied to any monetary award.

The landlord stated his claim as:

ITEM	AMOUNT
Outstanding rent	\$17,000.00
Outstanding utilities	\$1,078.68
Filing fee	\$100.00
(Less deposits)	(\$3,400.00)
TOTAL	\$14,778.68

5. Dismissal of Tenant's Claims

As stated earlier, the tenant attended the hearing for a short time and consented to an Order of Possession.

The tenant did not serve the landlord with their Notice of Hearing or Application for Dispute Resolution. The tenant submitted no evidence with respect to the balance of their claims and refused to participate in the hearing.

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 reapply.

As the tenant failed to serve the landlord as required, failed to attend the entire hearing, suddenly withdrew, and did not submit any evidence, I order the remainder of the tenant's application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent and utilities as well as reimbursement of the filing fee and authorization to apply the security deposit to the award?

Background and Evidence

The landlord submitted a copy of the tenancy agreement and provided the following background to the tenancy:

INFORMATION	DETAILS
Type of Tenancy	Fixed
Beginning Date	July 1, 2022
Fixed Term End Date	July 1, 2023
Vacancy Date	February 3, 2023
Rent payable on first of month	\$3,400.00
Security deposit and pet deposit	\$3,400.00

Arrears of Rent	\$17,000.00
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The landlord submitted a copy of a 10 Day Notice in the RTB form and testified as follows:

INFORMATION	DETAILS
Type of Notice	10 Day Notice
Date of Notice	September 12, 2022
Effective Date of Notice	September 22, 2022
Date and Method of Service	Posted to door on September 12, 2022 and by email on that day
Effective Date of Service	September 15, 2022
Reasons for Issuance	\$400.00 rent owing September 2022
Application for Dispute Resolution filed - date	September 29, 2022
Service of Application for Dispute Resolution upon Landlord	No service

The landlord testified rent and utilities have subsequently accrued. The tenant has made no payments on either. Rent and utilities are owing as set out below. The landlord requested an award for rent, utilities, the filing fee and asked for authorization to apply the security deposit to the award. The landlord's claim is:

ITEM	AMOUNT
Outstanding rent	\$17,000.00
Outstanding utilities	\$1,078.68
Filing fee	\$100.00
(Less deposits)	(\$3,400.00)
TOTAL	\$14,778.68

The landlord requested an Order of Possession pursuant to the consent of the parties and a Monetary Order of **14,778.68**.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

I accept the entirety of the landlord's evidence which was well supported by documentary evidence. The landlord was credible and submitted reliable evidence.

I find the tenant was served with the 10 Day Notice on effective September 15, 2022, in accordance with the *Act*. I find the form and content of the Notice complies with section 52 of the *Act*.

I accept the landlord's credible and reliable testimony and complete supporting evidence that rent and utilities have subsequently accrued as he testified. I find the tenant owes outstanding rent of \$17,000.00 and utilities of \$1,078.68.

I have dismissed the tenant's application without leave to reapply including the application to cancel the 10 Day Notice.

A tenant is required to pay rent when it is due. Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes outstanding rent and utilities as claimed. The tenant's explanation for why they did not pay rent is not justification under the *Act* for failure to pay.

Accordingly, I find the tenant is in breach of section 26 of the *Act* by not paying the amount claimed by the landlord in accordance with the tenancy agreement.

I have granted the landlord authorization under section 72 to apply the security deposit to the award.

As the landlord is successful in this matter, I grant the landlord an award of \$100.00 for reimbursement of the filing fee.

Summary of Award

I grant a Monetary Order of **\$14,778.68** to the landlord as follows:

ITEM	AMOUNT
Outstanding rent	\$17,000.00
Outstanding utilities	\$1,078.68
Filing fee	\$100.00
(Less deposits)	(\$3,400.00)
TOTAL	\$14,778.68

Conclusion

I grant an Order of Possession effective 1:00 PM February 3, 2023, pursuant to the consent of the parties.

I grant the landlord a Monetary Order of **\$14,778.68**.

Both Orders may be filed and enforced in the Courts of the Province of BC.

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 11, 2023

Residential Tenancy Branch