



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, FFL**

Introduction

This hearing 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 ("Ten-Day Notice ") pursuant to sections 46 and 55;
- A Monetary Order for unpaid rent under section 67;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended. The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Preliminary issues were the following.

1. Attendance of Tenant

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 35 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had

called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

2. Recording

The persons attending were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. They confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

3. Delivery of Decision

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

4. Service

As the tenant did not attend the hearing, the landlord provided testimony regarding service of the landlord's materials.

The landlord provided testimony they served the tenant with Notice of Hearing and Application for Dispute Resolution on January 9, 2023 by attaching the documents to the tenant's door. The landlord submitted several photographs of the posting: picture of the document envelope, the attachment to the door, the landlord knocking on the door, and photos of two present witnesses, LT and RT.

I find the testimony of the landlord combined with the documentary evidence to be credible and reliable. Further to the evidence submitted by the landlord, I find the landlord served the tenant with the landlord's evidence 3 days after posting on January 12, 2023, in compliance with section 89 of the Act.

5. Security deposit

The landlord requested an amendment to the landlord's application to request that the landlord be authorized to apply the security deposit of \$650.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit in this amount 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 be applied to any monetary award.

6. Previous Decision

The landlord stated this is the second hearing between the parties. Reference to the earlier hearing's file number appears on the first page.

The previous Decision dated July 12, 2022, granted the landlord a Monetary Order for outstanding rent in the amount of \$13,750.00.

The landlord stated the tenant has not paid any rent since that time and the Monetary Order remains unpaid. Additional rent has accrued.

The landlord requested a Monetary Order for subsequently accrued rent in the amount of \$8,550.00. The landlord submitted documentary evidence of the calculation of the rent owing to date.

Section 55 states:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) ...

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

(3) ...

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Accordingly, I accept the tenant's claim for a Monetary Order for rent in the amount of \$8,550.00 which is addressed herein.

7. Summary of Landlord's Monetary Claim

In summary, the landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Rent outstanding	\$8,550.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$650.00)
TOTAL MONETARY ORDER REQUESTED	\$8,000.00

Issue(s) to be Decided

Is the landlord entitled to reimbursement of the filing fee, a Monetary Order as set out above and an Order of Possession?

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing.

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord purchased the rental unit on June 14, 2021 and the tenancy started prior to that date. Monthly rent is \$1,300.00, due on the fifteenth day of the month. The landlord collected and holds in trust a deposit of \$650.00.

The landlord submitted a contract of purchase and sale. It states:

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- (a) the property is subject to a tenancy agreement under the Residential Tenancy Act;
- (b) the monthly rent is \$1,300.00 per month;
- (d) the monthly rent is due on the 15th day of each month;
- (e) a security deposit of was paid by the tenant on May 12, 2021; and

The landlord testified the tenant has not paid rent since August 15, 2021 and the accumulated rent after the previous Monetary Order is \$8,550.00.

The landlord is claiming an Order of Possession and Monetary Order in the amount of \$8,550.00.

The landlord testified the landlord issued a 10 Day Notice in the standard RTB form, a copy of which was submitted. The details are as follows:

INFORMATION	DETAILS
Type of Notice	10 Day Notice
Date of Notice	December 15, 2022
Effective Date of Notice	December 25, 2022
Date and Method of Service	December 15, 2022, Personal
Effective Date of Service	December 15, 2022

Reasons for Issuance	Nonpayment rent
Application for Dispute Resolution filed	January 8, 2023
Arrears - current	\$8,550.00

The 10 Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date.

The tenant has not filed an Application for Dispute Resolution.

The tenant has not provided written authorization to the landlord to apply the deposit to outstanding rent.

The landlord provided uncontradicted testimony and supporting evidence that the amount claimed remain unpaid and owing to the landlord. The tenant has made no payment on rent since August 15, 2021.

As a Monetary Order has been issued previously, the amount of \$8,550.00 is the subsequent unpaid rent.

The landlord testified the current arrears of rent are \$8,550.00 and requested a Monetary Order in this amount. The landlord submitted a Monetary Order worksheet calculating the rent owed.

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Rent outstanding	\$8,550.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$650.00)
TOTAL MONTETARY ORDER REQUESTED	\$8,000.00

The landlord requested an Order of Possession.

Analysis

I have reviewed the uncontradicted evidence of the landlord and make the following findings.

10 Day Notice

I find the form and content of the 10 Day Notice complies with section 52 of the Act.

I accept the landlord's testimony that the tenant was served with the 10 Day Notice as testified and in accordance with the Act.

I accept the landlord's testimony and documentary evidence regarding outstanding rent. I find the tenant did not pay the overdue amount claimed and has made no periodic payment on outstanding rent.

The tenant has not attended the arbitration. The tenant has not filed an Application for Dispute Resolution.

The landlord testified the tenant remains in the unit.

Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit.

Order of Possession

Based on the Act and the uncontradicted credible evidence of the landlord, I grant the landlord an Order of Possession pursuant to sections 46 and 55 effective on 2 days notice.

Monetary Order

Based on the uncontradicted testimony and credible documentary evidence of the landlord, I grant the landlord a Monetary Order pursuant to section 55 for outstanding rent as requested in the amount of \$8,550.00.

Filing Fee

As the landlord has been successful in this application, I award the landlord reimbursement of the filing fee of \$100.00 pursuant to section 72.

Security deposit

I authorize the landlord to apply the security deposit to the award pursuant to section 72.

Summary of Award

My award is summarized as follows.

ITEM	AMOUNT
Rent outstanding	\$8,550.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$650.00)
TOTAL	\$8,000.00

Conclusion

The landlord is granted an Order of Possession effective on 2 days notice.

The landlord is granted a Monetary Order for \$8,000.00.

These Orders must be served on the tenant. The Orders may be registered 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 03, 2023

Residential Tenancy Branch