



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNR RP
Landlord: OPU MNU

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 24, 2023. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Tenant's Application

The Landlord attended the hearing. However, the Tenant did not. The hearing was by telephone conference and began promptly, as scheduled, at 11:00 AM Pacific Time on February 24, 2023, as per the Notice of a Dispute Resolution Hearing provided to the Tenant. The line remained open while the phone system was monitored for 10 minutes and the only participant who called into the hearing during this time was the Landlord who was ready to proceed. The Landlord testified that the Tenant continues to reside in the rental unit.

After the ten minute waiting period, the Tenant's application was **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

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.

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the 10 Day Notice issued on October 6, 2022, complies with section 52 of the *Act*, in terms of the form and content requirements. As such, I find the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. This order will be effective 2 days after it is served on the Tenant.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. This means the only remaining issue for this application is what amount of rent is owed. This will be addressed further below.

Landlord's Application

The Landlord's application was filed on October 24, 2022. However, it was deemed to be abandoned, due to "applicant inaction". As such, I will not consider the Landlord's application further. The Landlord may need to reapply should he wish to pursue compensation related to unpaid utilities.

The Landlord stated that he served his evidence to the Tenant, by registered mail on November 10, 2022. Proof of mailing was provided. Pursuant to section 90 of the Act, I find the Tenant is deemed to have received this package 5 days after it was sent to her rental unit.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent in the amount of \$1,400.00 is due on the first of each month. The Landlord holds a security deposit in the amount of \$1,000.00.

The 10 Day Notice issued in October of 2022, was provided into evidence, and states that \$5,436.00 was owed. The Landlord also indicated on this 10 Day Notice that there was \$640.00 in unpaid utilities.

The Landlord was unable to provide a clear explanation as to what utilities were owed, as he only had approximate amounts. However, with respect to unpaid rent, he testified the following:

The Tenant failed to pay any rent for March or April of 2022, amounting to \$2,800.00. The Tenant also failed to pay \$206.00 each month for May, June, and July of 2022, totalling \$618.00. The Tenant also failed to pay \$245.00 each month for August 2022 through till February 2023, totalling \$1,715.00. In total, the Landlord stated the Tenant owes \$5,133.00, as laid out above, for unpaid rent.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the unpaid utilities, I find the Landlord provided a confusing explanation as to what was owed, and what periods it covered. The Landlord only provided vague details of amounts. As such, and as stated above, I dismiss the Landlord's request for monetary compensation for unpaid utilities, with leave to reapply. The Landlord must re-apply should he wish to claim for the utility amounts. I encourage the Landlord to itemize the utilities more carefully for any future application.

With respect to unpaid rent, I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. Pursuant to section 55 (1.1) of the *Act*, I find there is sufficient evidence from the Landlord's testimony to demonstrate that the Tenant owes and has failed to pay \$5,133.00 in rent, up to and including the rent accrued as of this hearing date. I allow the Landlord to amend their application to include rent that has accrued since the time the application was made.

Pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$5,133.00
Less:	
Security Deposit currently held by Landlord	(\$1,000.00)
TOTAL:	\$4,133.00

Conclusion

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$4,133.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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