



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR
Landlord: OPR MNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 2, 2023. Both parties applied for remedies related to a 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the Notice), 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 25, 2022, 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 and not pay rent.

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 August 4, 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, as it also relates to the Landlord's cross application (for an order of possession, and for a monetary order for unpaid rent).

Landlord's Application

The Landlord stated that she served the Tenant with the Notice of Dispute Resolution Proceeding by registered mail on October 14, 2022. Proof of mailing was provided during the hearing. Pursuant to section 89 and 90 of the *Act*, I find the Tenant is

deemed to have received this package 5 days after it was sent. The Landlord also stated they served their evidence package by putting it in the Tenant's mailbox on January 6, 2023. Pursuant to section 90 of the Act, I find this package is deemed served 3 days later.

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 \$5,000.00 is due on the first of each month.

The 10 Day Notice issued on August 4, 2022, was provided into evidence, and states that \$5,000.00 was owed at the beginning of August 2022. The Landlord stated that the Tenant paid the following amounts since the Notice was issued:

| Date | Item | Amount Due | Amount Paid | Accrued Balance Owning |
|-------------------|--------------|-------------------|--------------------|-------------------------------|
| August 1, 2022 | Rent Due | \$5,000.00 | | \$5,000.00 |
| August 15, 2022 | Rent Payment | | \$1,000.00 | \$4,000.00 |
| August 24, 2022 | Rent Payment | | \$2,250.00 | \$1,750.00 |
| August 25, 2022 | Rent Payment | | \$1,750.00 | \$0.00 |
| September 1, 2022 | Rent Due | \$5,000.00 | | \$5,000.00 |
| September 9, 2022 | Rent Payment | | \$5,000.00 | \$0.00 |
| October 1, 2022 | Rent Due | \$5,000.00 | | \$5,000.00 |
| October 11, 2022 | Rent Payment | | \$2,000.00 | \$3,000.00 |
| October 19, 2022 | Rent Payment | | \$500.00 | \$2,500.00 |
| October 29, 2022 | Rent Payment | | \$350.00 | \$2,150.00 |
| November 1, 2022 | Rent Due | \$5,000.00 | | \$7,150.00 |
| November 4, 2022 | Rent Payment | | \$500.00 | \$6,650.00 |

| | | | |
|------------------------------|--------------|------------|--------------------|
| November 9, 2022 | Rent payment | \$2,500.00 | \$4,150.00 |
| November 24, 2022 | Rent Payment | \$1,000.00 | \$3,150.00 |
| December 1, 2022 | Rent Due | \$5,000.00 | \$8,150.00 |
| January 1, 2023 | Rent Due | \$5,000.00 | \$13,150.00 |
| February 1, 2023 | Rent Due | \$5,000.00 | \$18,150.00 |
| Total Accrued Balance | | | \$18,150.00 |

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.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. I find there is sufficient evidence from the Landlord's testimony to demonstrate that the Tenant owes and has failed to pay \$18,150.00 in rent, as outlined in the chart above.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100.

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 **\$18,250.00**. 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 03, 2023