



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWYND REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

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

- 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*;
- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") pursuant to sections 46 and 55;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing is a continuation of an *ex parte* hearing which began on February 2, 2023. On that date, an adjudicator ordered:

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

The tenants attended the continuation of the hearing (“the tenant”). The landlord’s agent JB and DG (“the landlord”) attended.

Each party confirmed they were not recording the hearing.

Each party confirmed their email address for the delivery of the Decision.

The tenant acknowledged service of the landlord’s documents. I find the landlord complied with the service requirements of the Act.

Settlement

The parties settled one of the issues between them during the hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise, and achieved a resolution of their dispute.

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 March 8, 2023 by

which time the tenant and any other occupants will return vacant possession of the rental unit to the landlord.

2. The parties will conduct a condition inspection at 1:00 PM on March 8, 2023.

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

1. Order of Possession effective at 1:00 PM on March 8, 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*.

Based on the above, I find that all matters between these parties raised in this application are resolved pursuant to the above agreed terms.

Remaining Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for outstanding rent and for reimbursement of the filing fee?

Background and Evidence

Tenancy

A copy of the tenancy agreement was submitted. The parties agreed on the following background of the tenancy:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	yes
Type of Tenancy	Month-to-month
Beginning Date	July 1, 2022
Rent payable on first of month	\$3,800.00
Security deposit	\$1,900.00
Arrears of Rent	8 months = \$30,400.00

10 Day Notice

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) in the RTB form dated August 11, 2022, for \$3,800.00 in unpaid rent. The 10 Day Notice provides that 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 of August 21, 2022.

The tenant agreed they were served with the 10 Day Notice and they did not apply to dispute the Notice.

Outstanding Rent

The landlord testified the current outstanding rent is \$30,400.00 as the tenant has not paid rent for 8 months.

The landlord submitted a ledger and other supporting documents in support of the rental calculation.

The landlord clarified they are not requesting outstanding utilities.

The landlord's application did not include the most recent month of March 2023 for which the tenant did not pay rent. The landlord requested an amendment to increase the amount claimed by one month for the total of \$30,400.00.

Tenant's Position

The tenant acknowledged the truth of the landlord's evidence regarding the background of the tenancy and the 10 Day Notice.

The tenant also acknowledged they have not paid rent for a period of 8 months and \$30,400.00 is owing in outstanding rent.

However, the tenant provided testimony about conditions of the unit requiring repairs which the landlord failed to repair. The tenant stated they have not brought an application for repairs or for a reduction in rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The claimant (the landlord) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the

Act

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The above-noted criteria are based on sections 7 and 67 of the Act.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations, or a tenancy agreement.

These sections state as following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67. Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the landlord's evidence confirmed by the tenant's testimony that the arrears of rent are \$30,400.00 and the tenant has not paid rent for 8 months. The tenant stated these facts are correct.

I accordingly grant the landlord authority to amend their claim to include rent due and owing for the month of March 2023 for a total claim of \$30,400.00.

I have considered all the evidence submitted I find the landlord's submissions to be persuasive, professional and forthright. Their evidence package was well-organized and complete. Their testimony was credible, forthright, and convincing.

I accept the landlord's credible evidence setting out the amounts paid and due.

A tenant is required to pay rent when due. Section 26(1) states:

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the landlord has met the burden of proof with respect to the claim for outstanding rent of \$30,400.00. I find the landlord has met all four parts of the 4 part test.

The tenant must pay rent when it is due under section 26. The tenant had no lawful right not to pay rent.

I grant the landlord a Monetary Order in the amount of \$30,400.00. As the landlord has been successful in this application I grant the landlord an award of \$100.00 for the filing fee. The total Monetary Order is \$30,500.00.

Conclusion

The Application for Dispute Resolution is partly settled on the above terms of settlement.

Pursuant to the above settlement, I issue the following Order(s):

1. Order of Possession effective 1:00 PM on March 8, 2023

I also grant the landlord a Monetary Order in the amount of \$30,500.00. This award must be served on the tenant. The Monetary Order may be enforced by 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: March 02, 2023

Residential Tenancy Branch