



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: **CNC**
Landlord: **OPR, MNRL-S, FFL**
OPC, MNDL, FFL

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. An Order of Possession for the One Month Notice pursuant to Sections 47 and 55 of the Act;
3. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
4. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Section 38 of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice by Canada Post registered mail on December 14, 2022. The Landlord’s Agent referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt. I find that the 10 Day Notice was deemed served on the Tenant on December 19, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord by attaching a copy on the Landlord’s door on November 24, 2022 (the “NoDRP package”). The Tenant stated he also included the evidence in the NoDRP package. The Landlord confirmed receipt of the NoDRP package, but not of the evidence. I find that the Landlord was sufficiently served with the NoDRP package for this hearing on November 27, 2022, in accordance with Section 71(2)(b) of the Act. I find the Tenant did not serve his evidence on the Landlord by attaching it to the Landlord’s door. I note that the Tenant’s evidence included a copy of the One Month Notice and the tenancy agreement both of which the Landlord has copies.

The Landlord’s Agent testified that the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN on January 4, 2023 by Canada Post registered mail (the “NoDRP package-OP/MN”). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on January 9, 2023 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served their evidence on the Tenant by Canada Post registered mail on February 16, 2023. The Landlord’s Agent referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the One Month Notice was deemed served on the Tenants on October 6, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Preliminary Matter

Withdrawal of dispute resolution application

In the hearing, the Landlord's Agent stated that the Landlord is withdrawing their application for an order of possession for cause, their claim for a monetary order for the Tenant to pay to repair damage to the rental unit, and their application for recovery of the filing fee. The Tenant did not object to the withdrawal of this application. I find the Landlord's application for an order of possession for cause, a monetary order for the Tenant to pay to repair damage to the rental unit, and their application for recovery of the filing fee is withdrawn.

As the Landlord's application above dealt with the One Month Notice, I find the Tenant's application to cancel the One Month Notice is no longer needed.

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord's Agent's request to amend their original application from \$3,600.00 to \$18,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's Agent testified that this tenancy began as a fixed term tenancy on October 20, 2022. The fixed term was to end on October 20, 2023. Monthly rent is \$3,600.00 payable on the 20th day of each month. A security deposit of \$1,800.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$3,600.00 in outstanding rent on November 20, 2022. The effective date of the 10 Day Notice was December 23, 2022.

The Tenant said he moved out on November 20, 2022. He submitted there was a broken window, and there were problems with the heating.

The Landlord's Agent stated there are numerous occupants staying in the rental unit and paying rent to the Tenant. The Tenant keeps a room for himself in the house. The Tenant has erected sub walls to make additional bedrooms that he can rent out. The Tenant did not leave the rental unit and give possession back to the Landlord.

The Landlord's Agent testified that the Tenant has not paid for November 2022, December 2022, January 2023, February 2023, and March 2023. The Landlord's Agent stated that the Tenant does not have permission from the Landlord to withhold rent, and the Tenant has not received an Order from an Arbitrator authorizing him to withhold rent. The Tenant has not disputed the 10 Day Notice.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$18,000.00.

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.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

- 46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) *must vacate the rental unit to which the notice relates by that date.*
- ...

The Tenant was deemed served with the 10 Day Notice on December 19, 2022. I find that the 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant did not apply for dispute resolution after receiving the 10 Day Notice. Accordingly, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

The Landlord's Agent submitted that the Tenant is deeply in arrears and owes \$18,000.00 in unpaid rent. The Landlord's Agent said the Tenant neither has permission from the Landlord to withhold rent, nor has the Tenant received an Order from an Arbitrator authorizing him to withhold rent. The Tenant has not disputed the 10 Day Notice and I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

Order of possession for the landlord

55 ...

- (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:*

...

- (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;*

...

- (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.*

I previously found that the Tenant did not apply to dispute the 10 Day Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective two (2) days after service on the Tenant.

The Landlord is also entitled to a Monetary Order for non-payment of rent pursuant to Section 55(4)(b) of the Act. The total outstanding rent amount is \$18,000.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$18,000.00
Less security deposit:	-\$1,800.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$16,300.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$16,300.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and 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 Act.

Dated: March 28, 2023

Residential Tenancy Branch