



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act
- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The tenant applied as follows:

- For cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 of the Act
- For an order authorizing the tenant to change the locks on the rental unit pursuant to section 31

While the landlord attended the hearing by way of conference call, the tenant did not, although I waited until 11:10 am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord stated that he served the 10 Day Notice dated November 6, 2022 with an effective date of November 16, 2022 on the tenant by attaching it to the front door of the rental unit on November 6, 2022. The landlord provided photos of the notice attached to the door along with a Proof of Service form in evidence. Pursuant to sections 88 and 90 of the Act the tenant is deemed to have been served with the notice on November 9, 2022 in accordance with the Act.

The landlord further testified that he served the tenant with the dispute notice and the respective materials by registered mail sent on February 9, 2023. He provided a receipt and a Canada Post tracking number in evidence as proof of service. I find the tenant deemed served on February 14, 2023 in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for compensation for unpaid rent?
3. Is the tenant entitled to an order allowing the tenant to change the locks on the rental unit?
4. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced November 1, 2022 on a month to month basis. Rent was \$1,700.00 per month due on the first day of the month. The landlord holds a security deposit of \$850.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord stated that the tenant only paid \$205.00 for November 2022 rent on November 10, 2022, and has not paid any rent for December 2022, January 2023, February 2023, and March 2023. He is requesting an order of possession and a monetary order for unpaid rent in the amount of \$8,295.00. He produced the 10 Day

Notice in evidence which stated that the tenant owed \$1,700.00 in rent as of December 1, 2022.

The tenant applied to cancel the 10 Day Notice along with other relief, however, they did not attend the hearing to speak to their application.

Analysis

RTB Rules of Procedure 6.6 states, "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 most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenant.

The tenant did not appear at the hearing therefore the tenant's application is dismissed per Rule of Procedure 7.1.

I accept the landlord's evidence and find that the tenant did not pay the full amount of rent owing for November 2022. The 10 Day Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the 10 Day Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective two days from the date it is served on the tenant.

The landlord has applied for a monetary order for unpaid rent. Section 55(1.1) of the Act requires me to grant a monetary order for unpaid rent if the 10 Day Notice complies with section 52 of the Act and if I dismiss the tenant's application. Both conditions are satisfied in this instance. Additionally, I am satisfied based on the evidence of the landlord that the tenant has failed to pay rent owing of \$1,495.00 for November 2022, and \$1,700.00 per month for December 2022 and January, February, and March 2023 for a total amount of \$8,295.00.

The landlord's application for an order of possession and for a monetary order for unpaid rent is granted. As the landlord is successful in his application, he is also entitled

to recover the filing fee for the application. The landlord is also entitled to retain the \$850.00 security deposit in partial satisfaction of the amount of rent owing.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order as follows:

Claim	Amount
Unpaid rent	\$8,295.00
Filing fee	\$100.00
Security Deposit	(\$850.00)
Total	\$7,545.00

The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 12, 2023

Residential Tenancy Branch