



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: OPR, OPC, MNRL-S, MNDL-S, MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an Order of Possession for cause, pursuant to section 55;
- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:13 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on by way of registered mail on February 17, 2023. The landlord provided Canada Post tracking number in their evidentiary materials, which is noted on the cover page of this decision. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on February 23, 2023, five days after the package was sent. The landlord submitted additional materials on March 14, 2023. As these additional materials were

not submitted within the required timelines as set out in the RTB Rules of Procedure, this late evidence will be excluded for the purposes of this hearing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served with the 10 Day Notice dated January 16, 2023 by way of posting the notice on the tenant's door on that date. In accordance with sections 88 and 90 of the Act, I find the tenant deemed served with the 10 Day Notice on January 19, 2023, 3 days after posting.

The landlord testified that the tenant was served with the 1 Month Notice to End Tenancy dated February 14, 2023 by way of registered mail. The landlord provided the tracking information, which is noted on the cover page of this decision. In accordance with sections 88 and 90 of the Act, I find the tenant deemed served with the 1 Month Notice on February 19, 2023, 5 days after mailing.

Although the landlord had applied for a monetary Order of \$5,000.00 in their initial claim, the landlord testified that the tenant has not paid any rent since this application was filed. 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. In this case, I find that it can be reasonably anticipated that the tenant owes \$1,000.00 in monthly rent each month. On this basis, I have accepted the landlord's request to amend their original application to reflect the unpaid rent that was owed at the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for losses and money owed?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The landlord testified that this fixed-term tenancy began on September 1, 2022. Monthly rent is set at \$1,000.00, payable on the first of the month. The landlord testified that the tenant paid a \$400.00 security deposit, which the landlord still holds.

The landlord testified that the tenant provided the landlord with five post-dated date cheques for the rent for September 2022 through to January 2023. The landlord testified that all cheques were returned NSF, and the landlord served the tenant with a 10 Day Notice for Unpaid Rent on January 16, 2023 for the \$5,000.00 in unpaid rent for this tenancy. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was issued, and the tenant has not vacated the home. The landlord wants to recover the unpaid rent for this tenancy, and is also requesting an Order of Possession.

On February 14, 2023, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause for repeated late rent payments, breaching a material term of the tenancy agreement, and for putting the landlord's property at risk.

The landlord testified that they believe that the tenant has caused considerable damage to the property and home, but the landlord has unable to verify the full state of the damage and cleaning required as the tenant has not yet vacated the home. The landlord requested a monetary order of \$300.00 for cleaning and painting and another \$300.00 for yard cleanup and repairs.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenant failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenant pay the outstanding rent. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 29, 2023.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenant and anyone on the premises to vacate the premises by January 29, 2023. As this has not occurred, I find that the landlord is entitled to an Order of Possession against the tenant, pursuant to section 55 of the *Act*.

As the 10 Day Notice was upheld and an Order of Possession was granted to the landlord, I make no findings on the merits of the 1 Month Notice to End Tenancy for Cause.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

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.

The landlord provided undisputed evidence that the tenant failed to pay any rent for this tenancy. On this basis, I allow the landlord to recover the unpaid rent for the eight month period of September 2022 to March 2023, totalling \$7,000.00.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As the tenant has not yet vacated the rental unit, and as the landlord has not yet had the opportunity to assess the damage to the rental unit and property, and the cleaning that is required, I dismiss the remaining monetary claims with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

A security deposit of \$400.00 is being held for this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's security deposit plus applicable interest in satisfaction of the monetary award granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$1.60 is payable as interest on the tenant's security deposit from September 1, 2022, until the date of this decision, March 16, 2023.

Conclusion

I issue a Monetary Order in the amount of **\$6,598.40** in the landlord's favour as set out in the table below:

Item	Amount
Unpaid Rent for Tenancy-September 2022 to March 2023 (7 months x \$1,000.00)	\$7,000.00

Less Security Deposit Held plus applicable interest	-401.60
Total Monetary Order	\$6,598.40

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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 and enforced as an Order of that Court.

I dismiss the remainder of the landlord's application with leave to reapply.

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 16, 2023

Residential Tenancy Branch