



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1025397 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Tenant: CNR
Landlord: OPR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application pursuant to section 72 of the *Act*

The tenant requested:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

KF (“landlord”) appeared as agent for the landlord in this hearing. KF confirmed that although they are no longer the management company for the building, KF still had authority to appear on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

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. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

The tenant confirmed receipt of the 10 Day Notice dated November 9, 2022, which was sent to the tenant by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on November 14, 2022, 5 days after mailing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to recover his filing fee for this application pursuant to section 72

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 both applications and my findings around it are set out below.

The tenant was added to the tenancy agreement as per an addendum to the original tenancy agreement on February 1, 2019 for this month-to-month tenancy. Monthly rent was set at \$786.00, payable on the first of the month. A rent increase came into effect on January 1, 2023, and monthly rent is now \$801.00. The landlord holds a security deposit of \$387.50 for this tenancy.

The co-tenant, LB, passed away suddenly sometime around December 13, 2021. The tenant submitted a copy of a 10 Day Notice to End Tenancy dated April 20, 2022 for outstanding rent for this tenancy. The tenant also submitted an accompanying note from the landlord's agent, KF, which stated the following:

"Your account shows \$641.50 in arrears. I printed this in case you need to show it to your assistance program. Please make arrangements right away to pay to clear the account. Call me if you have any questions."

The tenant testified that at that time, KF had informed the tenant, which allowed the tenant to pay the overdue rent. The tenant acquired a roommate, BK, to assist with the

monthly rent, and submitted an Intent to Rent to the landlord. The tenant testified that despite this, the tenant was served with another 10 Day Notice dated November 9, 2022. The tenant testified that they were not provided with any warnings this time that the outstanding rent was accruing. The tenant testified that the rent was paid directly by social assistance, and after informing social assistance that LB had passed away, the tenant assumed that everything was okay. The tenant testified that they did not receive this second 10 Day Notice until 10 months later, and without any notice that there was outstanding rent. The tenant testified that they had interactions with KF, but there was no mention of unpaid rent until the 10 Day Notice. The tenant testified that they should be provided with a payment plan as the outstanding rent balance is now too significant to be paid in one lump sum. The tenant testified that they had submitted two cheques, which have gone missing. The tenant testified that they have filed police reports, and have a police file number related to the missing cheques.

The landlord testified that they had worked with the tenant after LB passed away to ensure that the rent is paid. Despite this, the landlord testified that the outstanding rent has not been paid. The landlord submitted a ledger dated January 8, 2023, which showed a balance of \$4,808.00 as of January 3, 2023. The landlord denied tampering with, or stealing the cheques. The landlord testified that they have attempted to work with the tenant, as shown by the last 10 Day Notice, and that despite this, the tenant has not addressed the problem. The landlord testified that the onus is on the tenant to communicate with their subsidy program worker, and ensure that their rent is paid.

Analysis

Residential Tenancy Policy Guideline #13 clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

“A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.”

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.

Section 5(1) of the Regulation states that:

The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.

After LB passed away, the responsibility fell on MH to ensure that rent is paid in accordance with the tenancy agreement. Although the tenant feels that the 10 Day Notice is invalid as they were not informed of the outstanding rent prior the issuance of the 10 Day Notice, I find that the evidence presented by the landlord shows that in April 2022, they did inform the tenant to make arrangements to ensure that the rent is paid. I find that the evidence shows the tenant was aware that LB's death would affect the timely payment of their monthly rent, and although I sympathize with the tenant and the challenge they faced in dealing with this matter, the onus is on the tenant to ensure that the rent is paid on time, and in full.

Despite the tenant's testimony that they had made attempts to pay the outstanding rent by cheque, the tenant did not provide sufficient evidence to support that these efforts, nor did the tenant provide sufficient evidence to support their efforts to communicate with their social assistance worker to ensure that rent is paid. On the other hand, I find that the evidence clearly shows that the landlord had provided ample opportunity for the tenant to ensure that arrangements were made, including communicating with the tenant in April 2022 of their obligations. I find that the tenant was aware as of April 2022 that they would be responsible for making these arrangements.

Upon receipt of the 10 Day Notice dated November 9, 2022, the tenant had five days to make payment of the outstanding rent. I find that the tenant did not provide sufficient evidence to support any attempts to pay the outstanding rent. I find that the tenant failed to pay the outstanding rent in accordance with section 26 of the *Act*. I find that the tenant did not have authorization to withhold this outstanding rent. For this reason, the tenant's application is dismissed with leave to reapply, and I allow the landlord's application for an Order of Possession pursuant to section 55 of the *Act*.

Section 55(1) and (1.1) of the *Act* reads as follows:

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.

I find that the 10 Day Notice dated November 29, 2022 is valid and complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, November 22, 2022. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord provided a detailed ledger showing a balance of \$4,808.00. As the landlord did not file a separate application for recovery of the unpaid rent, I am unable to amend any applications to recover additional rent. I am satisfied that the tenant has not made any payments towards the outstanding rent on the 10 Day Notice. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$3,996.00 for the unpaid rent as stipulated on the 10 Day Notice.

As the landlord was successful with their application, I allow the landlord to recover the filing fee.

A security deposit of \$387.50 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, \$1.95 is payable as interest on the tenant's security deposit, which was originally paid on November 23, 2018, until the date of this decision, April 4, 2023.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a **\$3,706.55** Monetary Order in favour of the landlord under the following terms:

Item	Amount
Unpaid Rent as noted on the 10 Day Notice	\$3,996.00
Recovery of Filing Fee	100.00
Less Security Deposit Held plus applicable interest	-389.45
Total Monetary Order to Landlord	\$3,706.55

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 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 *Residential Tenancy Act*.

Dated: April 04, 2023

Residential Tenancy Branch