



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the landlord: OPR OPC MNRL FFL
For the tenant: CNR CNC RP RR FFT

Introduction

This dispute relates to an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act).

The landlord applied for the following:

1. Order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2023 (10 Day Notice),
2. Order of possession based on a 1 Month Notice to End Tenancy for Cause (1 Month Notice),
3. \$2,300 for unpaid rent,
4. \$100 filing fee.

The tenant applied for the following:

1. Cancel 10 Day Notice,
2. Cancel 1 Month Notice,
3. Rent Reduction,
4. Repairs,
5. \$100 filing fee.

The landlord and their agent attended the teleconference hearing and were affirmed. The hearing process was explained to the landlord and agent, and they were given an opportunity was given to ask questions about the hearing process. Thereafter, the landlord and agent gave affirmed testimony, were provided the opportunity to present

their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

As the tenant did not attend the hearing, service of the landlord's application on the tenant was considered. The landlord testified that the tenant was served personally on February 24, 2023 with the application. The landlord also testified that their evidence and amendments were served by email and submitted Residential Tenancy Branch (RTB) Form 51 to confirm that as of May 24, 2022, the tenant consented in writing to being served by email at the email address listed on the cover page of this decision.

Based on the above, I am satisfied that the tenant was sufficiently served. In addition, the tenant was provided with their own Notice of Hearing dated March 8, 2023, which includes the date and time of the hearing. Based on the above, as the tenant failed to attend the hearing to present the merits of their application, **I dismiss the tenant's application in full, without leave to reapply.**

RTB Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

As both parties included their email addresses the landlord was advised that the decision and any orders would be sent by email to the landlord for service on the tenant. The decision will be emailed to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- If yes, is there any need to consider the 1 Month Notice at this hearing?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence and reviewed during the hearing. The fixed-term tenancy began on April, 1, 2022 and is scheduled to convert to a month-to-month tenancy after March 31, 2024. Monthly rent of \$4,800 is due on the first day of each month. The tenant paid a security deposit of \$2,400 and a pet damage deposit of \$2,400 at the start of the tenancy, which the landlord continues to hold.

The amended application with the most recent 10 Day Notice was submitted in evidence. The agent confirmed that the tenant was served with the 10 Day Notice by email on March 2, 2023. The effective vacancy date is listed as March 15, 2023. The 10 Day Notice indicates that \$2,200 in rent was owed as of March 1, 2023. The landlord testified that the tenant has since failed to pay any rent for April 2023 in the amount of \$4,800. The landlord is seeking \$2,200 owing for unpaid rent for March 2023, plus \$4,800 owing for April 2023, plus the filing fee.

The landlord confirmed that the tenant continues to occupy the rental unit. The landlord seeks an order of possession.

Analysis

Based on the undisputed testimony of the agent and landlord, and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, as the tenant failed to attend the hearing, I find the 10 Day Notice was not disputed by the tenant. Furthermore, I accept the undisputed testimony of the agent and landlord that the tenant was served with the 10 Day Notice and failed to pay \$2,200 of March 2023 rent, which is a breach of section 26 of the Act.

I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act and find that it is valid as a result. I also accept the undisputed testimony of the landlord that the tenant has also failed to pay \$4,800 for April 2023. Section 55(1.1) of the Act applies and states:

55(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.**

[emphasis added]

Given the above, I grant the landlord **\$7,000** in unpaid rent comprised of \$2,200 owing for March 2023 rent, plus unpaid rent of April 2023 of \$4,800.

As the application has merit, I also grant the landlord the \$100 filing fee under section 72 of the Act. I find the landlord has established a total monetary claim of **\$7,100** based on the above.

Order of Possession – Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on March 15, 2023, which was the effective vacancy date listed on the 10 Day Notice.

Conclusion

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

The landlord's application is successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended March 15, 2023.

The landlord's total monetary claim is \$7,100. The landlord is granted a monetary order for that amount pursuant to section 67 of the Act.

The tenant is cautioned that they can be held liable for all costs related to the enforcement of the monetary order and order of possession, including but not limited to, court costs and bailiff fees.

This decision will be emailed to both parties.

The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2023

Residential Tenancy Branch