



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

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

While the applicant landlord attended the hearing by way of conference call, the respondent tenants did not. 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 hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord testified she served a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) dated March 2, 2023 with an effective date of March 12, 2023 on the tenants by attaching the notice to the door of the rental unit on March 2, 2023. Pursuant to sections 88 and 90 of the Act the tenants are deemed to have been served with this notice on March 5, 2023 in accordance with the Act.

The landlord further testified that she served the dispute notice and materials to the tenants by posting them on the door of the rental unit on March 30, 2023. The landlord provided proof of service in evidence, I find that the tenants are deemed served on April 2, 2023 based on sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants? 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 landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced December 1, 2022 on a month to month basis. Rent was \$1,400.00 per month due on the first of the month. The landlord holds a security deposit of \$600.00 in trust for the tenants. The tenants still occupy the rental unit.

The landlord testified that the tenants did not pay rent March 1, 2023 and that was the basis upon which the 10 Day Notice was issued. The landlord also provided a monetary order worksheet in evidence showing that the tenants currently owe \$2,990.00 in outstanding rent as follows:

Monthly Breakdown of <u>Rent</u> on the 10 Day Notice to End Tenancy				
Month and date rent was due	Rent amount owing	Amount of partial payment(s) received	Date of partial payment(s)	Balance rent owed
example Jan. 1, 2015	example \$900	example \$300	example Jan. 1, 201 5	example \$600
Jan 1/23	1400	1210	Feb 16 - 19	190
Feb 1/23	1400	none		1400
Mar 1/23	1400	none .		1400
Attach additional page(s), if necessary. Amount listed for unpaid rent on the 10 Day Notice to End Tenancy				\$ 2990.00

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The 10 Day Notice sets out for the benefit of the tenant that the 10 Day Notice would be cancelled if the rent was paid within five (5) days. The 10 Day Notice also explained that alternatively the tenant had five days to dispute the 10 Day Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the 10 Day Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the 10 Day Notice within five days of service.

I find the tenants are 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, or September 7, 2022.

As a result, I order the tenancy ended on March 12, 2023, and I grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

I further find that the landlord has satisfied her onus to establish that the tenants owe unpaid rent in the amount of \$2,990.00. Section 55(1.1) of the Act requires me to issue an order for unpaid rent if I find the notice to be valid and I uphold the 10 Day Notice.

As the landlord is successful the landlord is also entitled to recover the \$100.00 filing fee for the application.

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 in the amount of \$3,000.00 for unpaid rent and the filing fee. 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: April 24, 2023

Residential Tenancy Branch