



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenant) A.S.	910094317	CNR, FFT
(Landlord) O.M. and K.M.	910095673	OPL, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant applied for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated December 2, 2022 ("10 Day Notice"); and
- recovery of her \$100.00 application filing fee.

The Landlords applied for:

- an Order of Possession, further to having served a Two Month Notice to End Tenancy for Landlord's Use dated October 30, 2022 ("Two Month Notice"); and
- recovery of their \$100.00 application filing fee;

The Tenant and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in the applications, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is either Party eligible for recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2020, with a monthly rent of \$1,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit.

The Two Month Notice was signed and dated October 30, 2022, and it has the rental unit address. It was served in person on October 30, 2022, with an effective vacancy date of January 15, 2023, which is automatically corrected by section 53 of the Act to be January 1, 2023. The Two Month Notice was served on the grounds that the rental unit will be occupied by the Landlord or the Landlord's close family member (parent of the Landlord or Landlord's spouse in this case).

The 10 Day Notice was signed and dated December 2, 2022, it has the rental unit address, it was served by attaching a copy to the rental unit door on December 2, 2022. The 10 Day Notice has an effective vacancy date of December 12, 2022, which is

automatically corrected by the Act to be December 15, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay any rent in November and December 2022. The Parties confirmed that the Tenant has not paid any rent since October 2022, and that she owes the Landlords \$1,600.00 per month in rent. The Landlords confirmed that the Tenant now owes them six months of rent or \$9,600.00.

The Landlords also said that the Tenant failed to pay her share of utilities, which is thirty percent of the total for the residential property, pursuant to the tenancy agreement. The Landlord said she gave the Tenant all of the utility bills and said she has to pay 30% of the total, which total was \$2,381.40. I find that 30% of this is \$714.42, which corresponds with what the Landlords claim from the Tenant in unpaid utilities.

In the hearing, the Tenant acknowledged that she has not paid the Landlords any rent since October 2022, nor has she paid her share of the utilities. The Tenant said she was confused about her obligations in this situation, although, she did not say she called the RTB for guidance at any time.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the Two Month Notice in person on October 30, 2022. I also find that the Tenant was served with the 10 Day Notice on December 5, 2022, three days after it was attached to the rental unit door.

Section 49 (9) of the Act states that if a tenant who has received a Two Month Notice does not apply for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the Two Month Notice, I find that she is conclusively presumed under section 49 (9) of the Act to have accepted the Two Month Notice, and I find that the tenancy, therefore, ended on January 1, 2023. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act. As the corrected effective date has passed and the Agent testified that rent for has not been paid for six months, the **Order of Possession** will therefore be **effective two days after service on the Tenant**.

Section 55 (1.1) states that if a tenant applies to the RTB to dispute a landlord's notice to end a tenancy for unpaid rent, then the director must Order the tenant to pay the landlord the unpaid rent, if the following circumstances apply:

- (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;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to the Tenants' Application. I, therefore, **award the Landlords \$9,600.00** from the Tenant in unpaid rent pursuant to sections 46, 55, and 67 of the Act.

Section 46 (6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them, and if the utility charges are unpaid for more than 30 days after receipt of the written demand. Based on the undisputed evidence before me overall, I find the Tenant owes the Landlord \$714.42 in unpaid utilities, which the Landlords advised the Tenant in writing. I, therefore, **award the Landlords \$714.42** in unpaid utilities pursuant to sections 46 and 67 of the Act.

I also find that the Landlords are entitled to recovery of their **\$100.00** filing fee pursuant to section 72 of the Act.

Summary and Set Off

I have made the following monetary awards to the Landlords:

\$ 9,600.00	-unpaid rent owing;
\$ 714.42	-unpaid utilities owing;
\$ 100.00	-recovery of Application filing fee;
<u>\$10,414.42</u>	-Total Award

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$800.00 security deposit** in partial satisfaction of the Landlords' monetary awards. Further, I grant the Landlords a **Monetary Order of \$9,614.42** representing the remaining amount of their monetary awards owed them by the Tenant.

The Landlords had the burden of proof in this matter, and given their success, I dismiss the Tenant's Application wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlords provided sufficient evidence to meet their burden of proof on a balance of probabilities in these matters. The Tenant's application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords are awarded **\$10,414.42** from the Tenant for unpaid rent and utilities and recovery of their \$100.00 Application filing fee. The Landlords are authorized to retain the Tenant's \$800.00 security deposit in partial satisfaction of this award. I grant the Landlords a **Monetary Order** of **\$9,614.42** for the balance owed to them by the Tenant.

The Landlords are provided with this Order in the above terms and 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 20, 2023

Residential Tenancy Branch