



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

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

- an early end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (PW) attended the hearing, the tenant did not attend the hearing.

PW stated that he served the tenant with the notice of dispute resolution proceeding package and supporting evidence on January 5, 2023 by posting it on the door of the rental unit.

Preliminary Issues – Amendments to Landlord's Application

1. Address of Rental Unit

The application listed the tenant's unit as (Upper) 38. I asked the landlord if this meant that there was a unit (Lower) 38. He stated that there was not, and that there was only one unit 38 at the residential property, which was occupied by the tenant. The 10 Day Notice to End Tenancy (the Notice) submitted into evidence lists the rental unit as unit 38. Accordingly, I amend the landlord's application to remove the word (Upper) from the rental unit address.

2. Nature of Landlord's Application

The landlord has applied for an order of possession by way of an early end to tenancy. This type of application is usually reserved for emergencies or other urgent matters relating to the conduct of the tenant. However, on the application of dispute resolution, the landlord described the reason for the eviction as:

I was send the 10 day notice at Sept 26, 2022. But she not move out and not pay any rent since Sept.

[as written]

The landlord attached as supporting evidence a copy of the Notice.

The standard practice for evictions for these reasons is to apply for an order of possession based on a 10 Day Notice to End Tenancy for Non-Payment of Rent. At the outset of the hearing, PW confirmed that the landlord sought an order of possession on that basis. He stated that he applied as he did based on the advice he received from the Service BC office at which he filed this application.

The Act does not allow an early end to tenancy for non-payment of rent. However, on its face, the landlord 's application is one for an eviction for non payment of rent, and not one for an early end to tenancy. As such, I find that the description of the landlord's claim as one for an early end to tenancy amounts to an inadvertent error. I find that upon receiving the notice of dispute resolution proceeding package, the tenant should have reasonably understood it to mean that the landlord sought to evict her based on non payment of rent.

Rule of Procedure 4.2 permits a claim to be amended in circumstances that can reasonably be anticipated. I find that is such a circumstance.

I order that the landlord's application is amended to remove the claim for an early end to tenancy and adding a claim for an order of possession based on the Notice.

I decline to add a monetary claim for unpaid rent, as the application in its original form made no mention of such a request and I do not find that the tenant could have reasonably anticipated such a claim. The landlord must make a further claim to recover rental arrears.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession based on the Notice; and
- 2) recover the filing fee?

Evidence and Analysis

While I have considered the documentary evidence and the testimony of PW, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a tenancy agreement starting in February 2020. Monthly rent is \$400 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$200, which the landlord continues to hold in trust for the tenant.

PW testified that:

- the tenant did not pay any rent for August or September 2022.
- the landlord served the tenant with the Notice on September 26, 2022 by posting it on the door of the rental unit.
- the Notice listed the arrears owed as \$800.
- the tenant did not dispute the Notice within five day of receiving it, or at all.
- the tenant did not pay the stated arrears within five days of receiving the Notice, or at all.
- the landlord did not receive any rent whatsoever from the tenant until April 2023, when two support service agencies paid the landlord \$600 total on the tenant's behalf.
- the tenant continues to reside in the rental unit.

I accept this undisputed testimony.

The landlord provided a digital copy of the Notice into evidence. It is not signed and does not list an effective date. However, in a photograph submitted into evidence of the Notice posted to the door of the rental unit, the Notice appears to be signed and listed an effective date of October 6, 2022. As such, I find that the Notice meets the form and content requirements of section 52 of the Act. The effective date of the Notice is automatically corrected to October 9, 2022 pursuant to section 52 of the Act, as the Notice is deemed served three days after it is posted, pursuant to section 90 of the Act.

I find that the tenant:

- was required to pay \$400 per month in rent.
- failed to pay rent for August and September 2022.
- was served with the Notice.
- did not dispute it or pay the arrears within five days of receiving it or at all.

Section 46 of the Act states that if the tenant received the Notice and did not pay the full amount of arrears or dispute the Notice within five days of receiving it, she is

conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

At the hearing, the landlord stated that he believed the tenant should have until the end of May 2023 to vacate the rental unit.

Accordingly, I grant the landlord an order of possession effective May 30, 2023. I order the landlord to serve the tenant with a copy of this decision and the attached order of possession no later than three days after receiving it from the Residential Tenancy Branch.

As the landlord has been success in the application it is entitled to recover its filing fee. It may keep \$100 of the security deposit in satisfaction of this amount.

Conclusion

I grant the landlord's application.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by May 31, 2023 at 1:00 pm.

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 28, 2023

Residential Tenancy Branch