



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SUPER 8 MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, RP, PSF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- more time to apply to cancel the 10 Day Notice of End of Tenancy for Unpaid Rent dated November 28, 2022 ("10 Day Notice");
- an order cancelling the 10 Day Notice;
- an Order for repairs to the unit or property; and
- an order to provide services or facilities required by the tenancy agreement or law.

An agent for the Landlord, S.S. ("Agent"), appeared at the teleconference hearing and provided affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on December 8, 2022; however, the Tenant did not attend the teleconference hearing scheduled for April 17, 2023, at 11:00 a.m. (Pacific Time). The phone line remained open for 19 minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord's Agent, who indicated that he was ready to proceed.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent was allowed to provide his evidence

orally and to respond to my questions. 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.

The Agent advised that he served the Tenant with the Landlord’s evidentiary submissions by posting them on the door of the rental unit weeks before the hearing.

Preliminary and Procedural Matters

The Tenant had provided the Landlord’s email addresses in the Application, which the Agent confirmed as accurate in the hearing. However, the Tenant did not provide an email address for herself. The Agent confirmed his understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agent that he was not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I advised the Agent that if the Tenant had attended that I would have severed her claims that are not associated with the 10 Day Notice, pursuant to Rule 2.3. As such, I advised the Agent that we would focus on the validity of the 10 Day Notice and the Landlord’s right to an order of possession and a monetary order for unpaid rent. As a result, the Tenant’s other claims are dismissed without leave to reapply, given the result herein.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if – first - I dismiss the tenant’s application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when a tenant applies to cancel an eviction notice. As such, the burden of proof was on the Landlord for this proceeding.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

- Is the Landlord entitled to a monetary order for unpaid rent, and if so, in what amount?

Background and Evidence

The Agent advised that the Landlord had purchased the residential property in late 2021, and that the Tenant was already living there at that point. The Agent did not know when the tenancy started with the prior landlord. However, he advised that the tenancy agreement requires the Tenant to pay the Landlord a (current) rent of \$1,200.00 per month, due on the first day of each month. The Agent said that when the Landlord purchased the property, there was no record of the Tenant having paid the previous landlord any security or pet damage deposit.

The 10 Day Notice was signed and dated November 28, 2022, it has the rental unit address, it was served by being posted on the rental unit door on November 28, 2022. The 10 Day Notice had an effective vacancy date of December 9, 2022, which is automatically corrected by the Act to December 11, 2022. The 10 Day Notice was served on the grounds that the Tenant owed the Landlord \$4,000.00 rent as of August 1, 2022. The Agent said that the Tenant has not paid anything since before August 1, 2022. He agreed with the calculations of rent owing set out on the following table.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Aug 1, 2022	\$4,000.00	\$0.00	\$4,000.00
Sep 1, 2022	\$1,200.00	\$0.00	\$1,200.00
Oct 1, 2022	\$1,200.00	\$0.00	\$1,200.00
Nov 1, 2022	\$1,200.00	\$0.00	\$1,200.00
Dec 1, 2022	\$1,200.00	\$0.00	\$1,200.00
Jan 1, 2023	\$1,200.00	\$0.00	\$1,200.00
Feb 1, 2023	\$1,200.00	\$0.00	\$1,200.00
March 1, 2023	\$1,200.00	\$0.00	\$1,200.00
April 1, 2023	\$1,200.00	\$0.00	\$1,200.00
	TOTAL		\$13,600.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that a 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on December 1, 2022, three days after it was attached to a door or other conspicuous place at the rental unit.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Agent confirmed that the Landlord was owed **\$13,600.00** in unpaid rent as of April 1, 2023.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$4,000.00 is incorrect, as it was based on outstanding rent amount for August 1, 2022. Further, the Agent stated that the amount owing is now up to \$13,600.00, as the Tenant has not paid any rent since before August 2022. The Agent said the Tenant owes the Landlord \$1,200.00 per month for September 1, 2022, through April 1, 2023, or \$9,600.00 for eight months of rent for the rental unit, in addition to the \$4,000.00 that was owed on August 1, 2022. The Agent requested that the monetary order be increased to \$13,600.00 to reflect the increasing amount of this debt.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, 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, as set out below. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to the Tenants' Application.

The Tenant did not attend the hearing to testify as to why the rent was not paid, and she did not present any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$13,600.00 in rent owed for August 1, 2022, through April 1, 2023. Further, as the burden of proof is on the Landlord, I find that the Agent provided sufficient evidence to support the validity of the 10 Day Notice. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply. Further, given that the tenancy is ending, the Tenant's Application is dismissed wholly without leave to reapply, pursuant to section 62 of the Act.

As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid \$13,600.00 in rent owing, I grant the Landlord an **Order of Possession, effective two days after service** of the Order on the Tenant, pursuant to section 55 of the Act.

Further, pursuant to sections 55 (1.1) and 67 of the Act, I grant the Landlord a **Monetary Order of \$13,600.00** from the Tenant.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to support the validity of the 10 Day Notice. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this order** on the Tenant. The Landlord is 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Further, I grant the Landlord a **Monetary Order of \$13,600.00** from the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial

Court (Small Claims) and enforced as an Order of that Court.

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 17, 2023

Residential Tenancy Branch