



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

On December 20, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process.

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:22 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing with his lawyer, TB and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's counsel testified that the tenant was sent a copy of the adjudicator's interim decision and the Notice of Dispute Resolution Proceedings via registered mail on December 21, 2022. I was referred to an affidavit of service provided by counsel's assistant, however counsel notes it contains a typo indicating the Notice of Dispute Resolution Proceedings was sent on December 12th instead of the 21st. Counsel advises that the package was refused by the tenant and it was returned to his office. I deem the Notice of Dispute Resolution Proceedings package and the interim decision were effectively served on the tenant on December 26, 2022, the fifth day after being sent via registered mail in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the notice to end tenancy for unpaid rent be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided the following documentary evidence:

- A copy of a residential tenancy agreement indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on October 31, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 29, 2022, for \$1,700.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of April 10, 2022;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenant in person at 1:45 pm on April 1, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy and
- an updated Direct Request Worksheet showing rent owing up to the date of the dispute resolution hearing.

The adjudicator adjourned the hearing for the landlord to answer questions that could only be addressed in a participatory hearing. Each question and the response is recorded below.

Issue 1:

the address of the rental address on the tenancy agreement includes a unit number that does not appear on the Application for Dispute Resolution.

Landlord: There are 2 sets of tenants on the residential property, one in a double wide mobile home (#1) , the other is a suite above the shop.(#2). Each set of tenants has their own separate mailbox at the post office and the postmaster separates and delivers their mail by the named recipient.

Issue 2:

the landlords named on the tenancy agreement (Person S.V. and Person A.V.) do not match the name of the landlord who is applying for dispute resolution (Person J.F.). I note the applicant's name was added to the tenancy agreement as a new landlord. However, I find there are no initials from the parties to confirm this change to the agreement.

Landlord: The 2 tenants named on the tenancy agreement were already living in the property when this landlord purchased it in 2020. The only change made was to add his own name on the first page of the tenancy agreement and the landlord gave the tenant a copy of the amended first page (with his contact information) when he became the tenant's landlord.

Issue 3:

while the tenant (Person H.P.) signed the sixth page of the agreement, the respondent is not named as a tenant on the first page of the agreement.

Landlord: Accepts that the person named as the tenant on the application for dispute resolution is the tenant. The other named tenant vacated the property in February 2022 and when she left, the rent was no longer paid. Both tenants paid rent to this landlord from the time he became their landlord until February 2022.

Issue 4:

the 10 Day Notice is dated March 29, 2022 and the landlord did not file for an Order of Possession until September 15, 2022, five and a half months later.

Landlord: The parties attended a dispute resolution hearing on August 25, 2022 where the landlord sought to end the tenancy early under section 56. The arbitrator would not consider the landlord's notice to end tenancy for unpaid rent at that hearing. The landlord filed this application after receiving the decision dated August 25, 2022.

The landlord testified that after personally serving the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities to the tenant on April 1, 2022, the tenant refused to have anything more to do with him. The tenant now runs away whenever the landlord attends the property. The last payment the tenant made towards rent was \$200.00 of the \$1,500.00 rent for February 1, 2022. The landlord seeks compensation of \$1,300.00 for February, 2022 and \$1,500.00 for every month since.

Analysis

I am satisfied the deficiencies identified by the adjudicator in the interim decision have been addressed. I find the tenant was personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on September 1, 2022 and did not file an application to dispute it within 10 days as required under section 46.

Pursuant to section 55(4) of the Act, I grant the landlord an Order of Possession. As the effective date stated on the notice has passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenant.

The landlord is also granted a monetary order in the amount of \$12,200.00, representing the unpaid rent of \$1,300.00 for February 2022 and \$1,500.00 per month from March 2022 to April, 2023. The landlord's application is amended to include the additional rent in accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure as the amendment could be reasonably anticipated by the tenant.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provision of section 72 of the Act, the landlord may retain the tenant's security deposit and pet damage deposit in the sum of \$1,250.00.

Item	Amount
Unpaid rent	\$12,200.00
Filing fee	\$100.00
Less security deposit and pet damage deposit	(\$1,250.00)
TOTAL	\$11,050.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I award the landlord a monetary order in the amount of \$11,050.00.

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 25, 2023

Residential Tenancy Branch