



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPU-DR, MNU-DR, 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 or utilities pursuant to section 67 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord KB appeared. The tenant did not appear. The landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The landlord was reminded to not record the hearing pursuant to Rule of Procedure 6.11. The landlord was affirmed.

The landlord testified that the 10 Day Notice to End Tenancy (“10 Day Notice”) dated October 4, 2022 with an effective date of October 31, 2022 was served on the tenant by leaving it in the mailbox at the rental unit on October 4, 2022. The landlord provided RTB 34 Proof of Service form in evidence. Pursuant to sections 89 and 90 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The landlord further testified that he served the dispute notice and materials on the tenant by registered mail dated January 26, 2023. He provided a photo of the package and Canada Post receipts in evidence as proof of service. I find the tenant duly served on January 31, 2023 in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue

The matter was adjourned from a direct request hearing as the individual landlord who made the application had a different name than the landlord on the tenancy agreement. The landlord testified at the hearing that he purchased the rental unit from a previous landlord and assumed the tenancy agreement. I am therefore satisfied that the landlord applicant has standing to make the application.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for compensation for unpaid rent or utilities?
3. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on May 1, 2021 and is currently month to month. Rent is \$1,400.00 per month due on the first of the month. The landlord holds a security deposit of \$700.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that the tenancy agreement required the tenant to pay 40% of the total utilities for the rental property. In May 2022 the tenant stopped paying utilities. The landlord issued a 30 Day Written Demand for Payment on September 2, 2022. The landlord provided in the 30 Day Written Demand for Payment in evidence.

The landlord provided the utilities bills in evidence for April through September 2022. The landlord testified that the tenant owed \$698.26 total in outstanding utilities for those months. This was the total amount owing at the time that the landlord served the 10 Day Notice.

The landlord further testified that the tenant owes the following in outstanding utilities since the 10 Day Notice was Served:

BC Hydro

October 2022	\$69.63
December 2022	\$82.72

February 2023	\$144.36
April 2023	\$181.22
Total	\$477.93

Fortis

September 2022	\$114.40
October 2022	\$114.40
November 2022	\$114.40
December 2022	\$86.00
January 2023	\$86.00
February 2023	\$151.33
March 2023	\$101.20
April 2023	\$101.20
Total	\$868.93

The total amount of utilities outstanding is \$2,045.12. The landlord is seeking a monetary order for this amount. The landlord testified that the tenant does not currently owe any rent.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenant.

I have reviewed the tenancy agreement in evidence. The tenancy agreement requires the tenant to pay 40% of the utilities.

Section 46(6) of the Act states:

(6)If

(a)a tenancy agreement requires the tenant to pay **utility** charges to the landlord, and

(b)the **utility** charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find based on the oral testimony of the landlord along with the written demand to pay utilities provided in evidence that the tenant did not pay the utilities as described by the landlord in his evidence, the landlord properly gave the tenant notice of the unpaid utilities, and they remained unpaid for more than 30 days after the written demand was given.

The 10 Day Notice is in evidence. The 10 Day Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the 10 Day Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective two days from the date it is served on the tenant.

Section 55(1.1) requires me to grant a monetary order for unpaid rent if the conditions in section 55(1) are satisfied. I find the conditions are satisfied and as section 46 of the Act allows the utilities to be treated as rent, I find that based on section 55(1.1) the landlord is entitled to a monetary order for compensation for unpaid utilities.

As the landlord was successful in his application, he 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 \$2,145.12 for unpaid utilities 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: May 12, 2023

Residential Tenancy Branch