



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on December 6, 2022 (the “10-Day Notice”);
- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

This matter had been scheduled for hearing on February 7, 2023 but was adjourned to today’s date as specified in my interim reasons.

J.E. appeared as the Landlord’s agent. The Tenant did not attend the hearing, nor did someone attend on their behalf.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the Notice of Dispute Resolution and initial evidence was served via registered mail sent on January 10, 2023 and additional evidence served via registered mail sent on February 8, 2023. I am provided with registered mail receipts by the Landlord as proof of service.

I find that the Landlord’s application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the first package on January 15, 2023 and the second package on February 13, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled its filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on November 1, 2017.
- Rent of \$911.00 is due on the first day of each month.
- A security deposit of \$430.00 was paid by the Tenant.

I am provided a copy of the tenancy agreement by the Landlord.

Is the Landlord entitled to an Order of Possession?

Under s. 55(2) of the *Act*, a landlord may request an order of possession if a notice to end tenancy has been given to the tenant and the time for disputing the notice to end tenancy has passed.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

The Landlord's agent advises that the 10-Day Notice was served on the Tenant by leaving it in her mailbox on December 6, 2022. I accept the undisputed testimony from

the Landlord's agent and find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on December 9, 2022.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice provided to me by the Landlord and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. In this instance, I am told by the Landlord's agent that the Tenant neither disputed the 10-Day Notice nor did she pay the arrears within 5 days. I accept the undisputed evidence from the Landlord's agent and find that s. 46(5) of the *Act* applies such that the Tenant is conclusively presumed to have accepted the end of the tenancy.

I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within two days of receiving the order of possession.

Is the Landlord Entitled to an Order for Unpaid Rent?

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent.

The Landlord's agent advises that, at the date of the hearing, the Tenant was in arrears of rent totalling \$5,424.00. I am provided with a rent ledger by the Landlord, which the Landlord's agent confirmed during the hearing, showing total arrears as of January 1, 2023 of \$4,650.00. The Landlord's agent further advised that the Tenant did make a partial rent payment of \$800.00 for January 2023, which is to be applied against the arrears listed in the ledger.

I am further told by the Landlord's agent that the Tenant made the following payments:

February 2023	\$400.00
March 2023	\$760.00
April 2023	\$910.00
May 2023	\$0.00

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent in accordance with the tenancy agreement and in breach of s. 26 of the *Act*. I permit the Landlord to seek the additional amount by amending its application pursuant to Rule 4.2 of the Rules of Procedure as the increase in arrears is reasonably anticipated under these circumstances.

I find that the Landlord is entitled to monetary compensation. I further find that the Landlord is entitled to compensation in lieu of rent for the overholding period as the Tenant failed to vacate the rental unit on the effective date of the 10-Day Notice.

I accept the Landlord's ledger and the testimony provided to me by the Landlord's agent such that total arrears are \$5,420.00 $((\$4,650.00 - \$800.00) + (\$910.00 \times 4 \text{ months (Feb 2023 to May 2023)}) - \$400.00 - \$760.00 - \$910.00)$. I find the Landlord is entitled to his amount and could not have mitigated its damages under the circumstances as the Tenant continues to reside within the rental unit.

Pursuant to s. 72(2) of the *Act*, I direct the Landlord retain the security deposit and interest in partial satisfaction of its unpaid rent claim. Taking this into account, I find that the Landlord is entitled to \$4,986.58 $(\$5,420.00 - \$430.00 - \$3.32)$.

I also grant the Landlord its filing fee of \$100.00 under s. 72(1) of the *Act* as it was successful in its application. The Tenant shall also pay this amount.

Conclusion

I grant the Landlord an order of possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

I grant the Landlord a monetary order pursuant to ss. 38, 67, and 72 of the *Act*. The Tenant shall pay **\$5,086.58** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: May 29, 2023

Residential Tenancy Branch