



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, OL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated November 21, 2022 ("10 Day Notice"); and for another issue not listed, which is for an order for unpaid rent of \$9,500.00 from the Tenant that was owing as of January 1, 2023.

The Landlord appeared at the teleconference hearing and gave 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 Landlord, 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 Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about it. During the hearing, the Landlord was given the opportunity 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 8, 2023. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided his email address in the Application and he confirmed it in the hearing. The Landlord did not have the Tenant's email address; therefore, I told him that we would send the Decision to the Tenant by mail. The Landlord confirmed his understanding that the Decision would be emailed to him 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 Landlord that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Landlord confirmed that he was not recording the hearing.

The Landlord stated that the amount owing in unpaid rent has risen since he applied for dispute resolution, as the Tenant only paid \$1,000.00 in February 2023, and he has paid no rent since then. The Landlord requested that his Application for a monetary order be increased to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after amending the Landlord's original amount claimed, I find that the amount of sought by the Landlord from the Tenant has increased from \$9,500.00 to \$16,025.00. Details of this amount are set out below.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Landlord advised that the tenancy began on February 18, 2022, with a monthly rent of \$2,150.00, due on the first day of each month. The Landlord confirmed that he had not required the Tenant to pay him a security deposit or a pet damage deposit.

In the hearing, the Landlord confirmed the following details of the 10 Day Notice that he had served to the Tenant. The 10 Day Notice was signed and dated November 21, 2022, and it has the rental unit address. It was served in the mail box or slot of the rental unit on November 21, 2022, with an effective vacancy date of December 4, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord \$6,925.00 in rent owing to that point.

The Landlord provided a list of the amounts the Tenant had paid from July 2022 through January 2023. In the hearing, the Landlord also advised that the Tenant paid \$1,000.00 of his rent in February 2023, but the Tenant has paid the Landlord no rent since then.

Based on the Landlord's evidence, I created the following table, setting out the amounts owing and paid.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
July 2022	\$2,150.00	\$1,250.00	\$900.00
Aug. 2022	\$2,150.00	\$900.00	\$1,250.00
Sept. 2022	\$2,150.00	\$900.00	\$1,250.00
Oct. 2022	\$2,150.00	\$1,300.00	\$850.00
Nov. 2022	\$2,150.00	\$500.00	\$1,650.00
Dec. 2022	\$2,150.00	\$900.00	\$1,250.00
Jan. 2023	\$2,150.00	\$875.00	\$1,275.00
Feb. 2023	\$2,150.00	\$1,000.00	\$1,150.00
Mar. 2023	\$2,150.00	\$0.00	\$2,150.00
April 2023	\$2,150.00	\$0.00	\$2,150.00
May 2023	\$2,150.00	\$0.00	\$2,150.00
	TOTAL		\$16,025.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

Section 26 of the Act states: “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 this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

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 the 10 Day Notice must comply with section 52, as to form and content.

I find that the 10 Day Notice is consistent with section 52 as to form and content, and I find that this 10 Day Notice is valid and enforceable.

Based on the evidence before me, I find that the Landlord is successful in his Application, as I find that the Tenant breached section 26 of the Act by failing to pay rent in full or at all on an ongoing basis.

As a result, and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession of the rental unit. This Order will be effective two days after it is deemed served to the Tenant, pursuant to section 90 of the Act. For instance, if the Order of Possession is taped to the rental unit door, it is deemed served to the Tenant three days later. From that point, the Tenant has two days to vacate the residential property.

Further, I find that the Landlord has met his burden of proof on a balance of probabilities for a Monetary Order for unpaid rent, pursuant to sections 26, 46, and 67 of the Act. As such, I grant the Landlord a **Monetary Order** of **\$16,025.00** for unpaid rent from the Tenant., pursuant to section 67 of the Act.

Conclusion

The Landlord's Application for an order of possession and a monetary order for unpaid rent is successful, as the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** for the rental unit, **effective two days after it is deemed served** to the Tenant. This Order

must be served to the Tenant by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the Landlord a **Monetary Order** under section 67 of the Act from the Tenant in the amount of **\$16,025.00** for the unpaid rent the Tenant owes to the Landlord. This Order must be served to 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: May 19, 2023

Residential Tenancy Branch