



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding PENTICTON & DISTRICT SOCIETY FOR COMMUNITY
LIVING and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord application:	OPC, FF
	Tenant application 1:	CNC, OLC
	Tenant application 2:	CNR

Introduction

This hearing was convened as the result of cross and repeat applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied on April 4, 2023, for an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) served to the tenant and recovery of the filing fee.

The tenant filed two applications. In their first application filed on April 24, 2023, the tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

In their second application filed on May 9, 2023, the tenant applied for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord.

The Residential Tenancy Branch (RTB) administratively joined the tenant's second application with the hearing on the parties' cross applications.

The landlord's agent attended the hearing and was affirmed. The tenant did not attend the hearing. The agent submitted that they served the tenant with the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (NODRP) to the tenant's door on April 13, 2023.

Based on the affirmed testimony and evidence, I find the landlord submitted sufficient evidence that they served the tenant with the NODRP as required under the Act.

During the hearing the agent was given the opportunity to provide submissions and refer to evidence. A summary of the submissions and evidence is provided below and includes only that which is relevant to the proceedings.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The RTB Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions at the hearing, I order the tenant's two applications dismissed, without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an order of possession and recovery of the filing fee?

Is the landlord entitled to a monetary order under section 55 (1.1) of the Act?

Background and Evidence

The landlord submitted that the tenancy began July 1, 2021 and the monthly rent is \$900. The agent said the tenant did not pay a security deposit and a pet damage

deposit, although the written tenancy agreement provided for those deposits were required. Filed in evidence was the written tenancy agreement.

The agent submitted that the tenant was served the 1 Month Notice by attaching it to the tenant's door on February 14, 2023, and to substantiate this submission, filed in evidence was a witnessed and signed Proof of Service. The Notice was dated February 14, 2023, and listed an effective move out date of March 15, 2023. Filed in evidence was a copy of the Notice.

The cause listed on the 1 Month Notice is:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided further information in the Details of Causes section of the Notice, further explaining the reasons for ending the tenancy.

The agent said that they were served with the tenant's application for an order cancelling the 1 Month Notice, but were not served with the tenant's application seeking cancellation of the 10 Day Notice and were unaware that the tenant filed to dispute that Notice.

The agent testified that they did serve the tenant with the 10 Day Notice on May 2, 2023, by attaching it to the tenant's door. The amount of unpaid rent listed was \$900, owed as of May 1, 2023. The agent confirmed that the tenant never paid the May 2023 rent, and vacated the rental unit without notice, sometime in May 2023.

The agent requested that I still issue an order of possession as the tenant never provided notice to vacate.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

I find the landlord submitted sufficient evidence to substantiate that the tenant was served with the 1 Month Notice as declared by the landlord on February 14, 2023, by attaching it to the tenant's door, which listed an effective move-out date of March 15,

2023. The effective date auto changes to the corrected effective date, in this case, March 31, 2023.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, the corrected, effective date is March 31, 2023.

The tenant filed an application in dispute of the Notice, but it was filed on April 24, 2023, well beyond the 10 days of service on February 14, 2023 of the 1 Month Notice.

I find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, or March 31, 2023.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act and was on the approved form with content meeting the statutory requirements under section 52 the Act.

I have reviewed the landlord's undisputed evidence and find they had sufficient cause to end the tenancy based upon the reason listed.

I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)**, pursuant to section 55(2)(b) of the Act, effective **two days** after service of the order upon the tenant.

Monetary order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant did not pay the monthly rent listed on the 10 Day Notice, or \$900 for May 2023, prior to vacating sometime that month, without notice. I find the landlord submitted sufficient evidence to show the tenant owed \$900 through May 2023.

As I have dismissed the tenant's application seeking cancellation of the 10 Day Notice, Section 55(1.1) of the Act applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Pursuant to section 55(1.1) of the Act, I order the tenant to pay the landlord the amount of \$900, which is the total amount of unpaid monthly rent owing through May 2023.

I grant the landlord recovery of the filing fee of \$100.

I grant the landlord a monetary order for the amount of \$1000, comprised of the unpaid monthly rent for May 2023 of \$900 and the filing fee of \$100.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application is granted in full.

The tenant's two applications are dismissed, without leave to reapply, due to their failure to attend the hearing.

The landlord is issued an order of possession of the rental unit and a monetary order for \$1000, as noted above.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 14, 2023