



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

OPR-DR MNR-DR FFL

Introduction

This hearing was reconvened as a result of the Landlord's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Landlord applied for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 55; and
- authorization to recover the filing fee for the Application from the Tenant.

This hearing was reconvened (Reconvened Hearing) from a non-participatory, *ex parte*, "direct request" proceeding (Original Hearing). In an interim decision dated March 27, 2023 (Interim Decision), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, the Reconvened Hearing was scheduled for hearing on June 30, 2023 to consider the Application. The Notice of Dispute Resolution Proceeding for the Reconvened Hearing (Reconvened NDRP) was enclosed with the Interim Decision and emailed to the Landlord. The Landlord was instructed by the Residential Tenancy Branch (RTB) to serve the Reconvened NDRP, Interim Decision and other required documents on the Tenant within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

The Tenant did not attend the Reconvened Hearing. I left the teleconference hearing connection open until 2:07 pm in order to enable the Tenant to call into the Reconvened Hearing scheduled for 1:30 pm. Two agents for the Landlord (JA and KM) attended the Reconvened Hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Reconvened NDRP. I also confirmed from the teleconference system that JA, KM and I were the only ones who had called into this teleconference.

JA stated the Landlord served the NDRP for the Original Hearing and the Landlord's evidence (Original NDRP Package) on the Tenant by registered mail on February 1, 2023. JA provided the Canada Post tracking number for service of the Original NDRP Package on the Tenant to corroborate her testimony. Based on JA's undisputed testimony, I find the Original NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Original NDRP Package was deemed to have been received by the Tenant on February 6, 2023, being 5 days after posting.

JA stated the Landlord served the notice of adjourned hearing (Reconvened NDRP) on the Tenant by registered mail on March 30, 2023. JA provided the Canada Post tracking number for service of the Reconvened NDRP on the Tenant. Based on the undisputed testimony of JA, I find the Reconvened NDRP was served on the Tenant in accordance with the provisions of section 89 of the Act. Pursuant to section 90 of the Act, I find the Reconvened NDRP was deemed to have been received by the Tenant on April 5, 2023, being 5 days after posting.

JA stated the Landlord did not receive any evidence from the Tenant for the Reconvened Hearing.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for unpaid rent and/or utilities?
- recover unpaid rent and/or utilities from the Tenant?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

AJ submitted into evidence a copy of a tenancy agreement, dated July 20, 2022, between the Tenant and the Landlord. AJ stated the tenancy commenced on August 1, 2022, on a month to month basis. AJ stated the rent was originally \$566.00 payable on

the first day of each month. AJ stated that, at the request of the Tenant, the rent was adjusted to \$518.00, commencing on December 1, 2022, on the basis of the Tenant's income. AJ submitted into evidence a copy of a tenant rent report confirming the rent contribution was adjusted to \$18.00 effective December 1, 2022 to August 31, 2023, to corroborate her testimony. The Tenant was required to pay a security deposit of \$283.00. AJ stated the Tenant paid the security deposit and that the Landlord was holding it in trust for the Tenant. Based on the undisputed testimony of AJ, I find there is a residential tenancy between the Landlord and Tenant and that I have jurisdiction to hear and adjudicate the Application.

AJ stated the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated January 9, 2023 (10 Day Notice) by registered mail on January 9, 2023. AJ submitted into evidence a copy of a signed Proof of Service on Form RTB-34 certifying the 10 Day Notice was served by registered mail on January 9, 2023. AJ submitted into evidence a copy of the Canada Post receipt for service of the 10 Day Notice with the tracking number to corroborate her testimony. I find the 10 Day Notice as served on the Tenant in accordance with the provisions of section 88 of the Act.

The effective date for move-out stated on the 10 Day Notice was January 27, 2023. AJ stated the Tenant has not vacated the rental unit. AJ stated the Tenant had a credit left over from payment of the rent on December 1, 2023 of \$48.00. AJ stated the \$48.00 credit was applied to the rent of \$518.00 for January 1, 2023, leaving arrears of \$470.00 for the month of January 2023. AJ stated the Tenant has not paid the rent for the months of February through June 2023. AJ submitted into evidence a completed Direct Request Worksheet on Form RTB-46 and a copy of the Tenant's ledger to corroborate her testimony that the Tenant had rental arrears of \$470.00 for January 2023.

Analysis

1. Landlord's Claim for Order of Possession

Subsection 26(1) and 46(1) through 46(5) of the Act state:

- 26(1) *A tenant must pay rent when it is due* under the tenancy agreement, whether or not the landlord complies with this 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.

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

The undisputed testimony of AJ was the 10 Day Notice was served on the Tenant by registered mail on January 9, 2023. Pursuant to section 90 of the Act, the Tenant was deemed to have been served with the 10 Day Notice on January 14, 2023. Pursuant to section 46(4), the Tenant had until January 19, 2023, to make an application for dispute resolution to dispute the 10 Day Notice. AJ stated she was unaware of the Tenant making an application to dispute the 10 Day Notice.

Based on the undisputed testimony of AJ, I find the Tenant owed the Landlord \$470.00 as of January 1, 2023. Section 26(1) provides that a tenant must pay the rent when due. As such, I find the Landlord has satisfied his onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. Pursuant to section 46(5) of the Act, the Tenant was conclusively presumed to have accepted that the tenancy ended on January 27, 2023, being the effective date of the 10 Day Notice.

Sections 55(2) and 55(4) state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- [...]
- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],
- (a) grant an order of possession, and
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Pursuant to section 46(5) of the Act, I find the tenancy ended on the effective date of the 10 Day Notice on January 27, 2023. As the Tenant did not make an application for dispute resolution to dispute the 10 Day Notice, and as he has not vacated the rental unit, I order the Tenant to provide the Landlord with vacant possession of the rental unit pursuant to section 55(4)(a) of the Act.

Although the Tenant was conclusively presumed to have accepted that the tenancy ended on January 27, 2023, I find, based on the undisputed testimony of AJ, that the Tenant owed the Landlord \$470.00 for rental arrears for January 2023. As such, I find the Landlord had cause to end the tenancy pursuant to the 10 Day Notice.

2. Monetary Order for Unpaid Rent:

As noted above, I have found that the Tenant had rental arrears of \$470.00 as of January 1, 2023 and the tenancy ended on January 27, 2023. AJ stated the Landlord is also seeking the balance of the rent due for the months of February through June, 2023, inclusive. Section 57(3) of the Act states:

57(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Policy Guideline 3 (PG 3) provides guidance, among other things, on situations where a landlord may seek unpaid rent or, where the tenancy has ended pursuant to conclusive presumption under section 46(5)(a) of the Act. PG 3 states in part:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

[emphasis in italics added]

Accordingly, the landlord must seek compensation where the tenant overholds the rental unit after the tenancy has ended pursuant to subsection 57(3) of the Act. In the Application, the Landlord made a claim for unpaid rent but did not make a

claim to seek monetary compensation for the Tenant overholding the rental unit. As such, the Landlord is not entitled to seek rental arrears that accrued after the effective date of the 10 Day Notice, being January 27, 2023. In these circumstances, the has the option of making an application for dispute resolution to seek compensation for the time the Tenant overholds the rental unit rental after the effective date of the 10 Day Notice as stated in PG 3.

As noted above, I have found the Tenant had rental arrears of \$470.00 as of January 1, 2023. Pursuant to section 55(4)(b) of the Act, I order the Tenant pay the Landlord \$470.00 in satisfaction of the rental arrears owed for January 2023. Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the Tenant's security deposit of \$283.00 from the rental arrears owed by the Tenant, leaving a balance of \$187.00 for rental arrears.

Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in the claims made in the Application, it may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 72(1) of the Act.

Conclusion

I order the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and the attached Order of Possession by the Landlord. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Tenant pay \$287.00 to the Landlord, representing the following:

Description	Amount
Rental Arrears for January 2023	\$470.00
Filing Fee for Application	\$100.00
Less Tenant's Security Deposit	\$283.00
Total	\$287.00

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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: July 6, 2023

Residential Tenancy Branch