



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR-DR, FFL, CNR, CNMN, PSF, FFT**

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

And the Tenant's cross-application requesting:

- to dispute the 10 Day Notice issued June 2, 2023
- that the Landlord provide services or facilities required by the tenancy agreement
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Both parties attended the hearing and gave affirmed testimony.

Issues to be Decided

Is the tenancy at an end?

Does the Tenant owe rent to the Landlord?

Is either party entitled to recover their filing fee?

Facts and Analysis

The tenancy began on November 1, 2021, with a monthly rent of \$3,900.00 due on the first of each month, and a security deposit of \$1,950.00 which the Landlord holds in trust.

Is the tenancy at an end?

The Landlord served multiple 10 Day Notices by email to the Tenant's pre-agreed email address for service, dated as follows:

- February 11, 2023
- March 11, 2023
- April 2, 2023
- May 2, 2023
- June 2, 2023
- July 2, 2023

Although the Landlord has not provided any use and occupancy receipts, they have made it clear by serving a 10 Day Notice each month that they do not want to reinstate the tenancy.

I find that a 10 Day Notice was served to the Tenant's email on March 12, 2023. The 10 Day Notice complies with section 52 of the Act. The Tenant is deemed to have received the 10 Day Notice on March 15, 2023, and had until March 20, 2023, to pay the rent in full to cancel the 10 Day Notice. The Landlord's bank records show payment was not made until March 22, 2023.

I find the Tenant failed to pay rent or file their dispute within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted the end of this tenancy.

Therefore, I find that the Landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 of the Act.

The Tenant says they will require more time to vacate the rental unit, and suggested August 15, 2023. The Tenant says they have two dogs, which makes it harder to find a rental unit. The Tenant may also need time to apply for financial aid through the BC Local Rent Bank.

The Landlord initially said they would like possession by July 30, but then suggested July 26, 2023. The Landlord mentioned concerns about pet damages and says they would like access to the rental unit right away to complete the move-out inspection and clean and repair the unit as needed.

According to Policy Guideline 54, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

To balance the interests of both parties, I grant the Landlord an order of possession effective July 30, 2023 at 1:00 pm.

Does the Tenant owe rent to the Landlord?

I have granted the Landlord an order of possession and the tenancy is at an end. Therefore, I dismiss the Tenant's application in its entirety without leave to reapply

Under section 55(1.1) of the Act, when dismissing a Tenant's application to cancel the 10 Day Notice, I must grant the Landlord an order requiring the repayment of the unpaid rent.

The Landlord says the last payment they received from the Tenant was for the full amount of rent for April 2023. The Landlord provided bank records showing payment of \$1,700.00 on April 4, 2023, and \$2,250.00 on April 10, 2023.

The Tenant says they have paid the rent owing up to date. The Tenant says they provided cash to a friend who sent payments to the Landlord by e-transfer most recently on July 2, 2023 for \$1,500.00, and July 5, 2023 for \$2,450.00.

The Landlord reviewed their bank records during the hearing and testified that they did not have a record of receiving any rent payments from the Tenant after April 10, 2023.

The Tenant was not able to provide any proof that they had paid rent for May, June or July 2023. The Tenant says they made these payments through a third party who completed the e-transfers to the Landlord's account. The Tenant should have obtained some documentary evidence that these payments were made, for example asking their friend to forward them a copy of the email confirmation of deposit. I have also considered the possibility the third party could have cancelled the payments without the

Tenant's knowledge or consent. Therefore, I cannot rely on the Tenant's assertion that they paid rent without any documentary evidence to support that claim.

The Landlord was forthright in providing their bank records showing payments made by the Tenant up until April 2023, after the first three 10 Day Notices were served. The Landlord also provided a Direct Request Worksheet indicating rent owing for May to July 2023.

Based on the evidence before me and on a balance of probabilities, I find that the Landlord has established a claim for unpaid rent owing for three months from May 2023 to July 2023, at \$3,900.00 per month.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under sections 55(1.1) and 67 of the Act, in the amount of \$11,700.00.

The parties are free to agree to a different amount of rent owing if they discover the Tenant made any payments after April 10, 2023, that were not accounted for. If the Landlord eventually enforces this monetary order through the Small Claims Court, and the Tenant disagrees with the amount owing, the Tenant may submit any proof of payment at a payment hearing.

Is either party entitled to recover their filing fee?

As the Landlord was successful in this application, I find that the Landlord is entitled to recover their \$100.00 filing fee.

Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply.

I grant the Landlord an Order of Possession effective July 30, 2023 at 1:00 pm, after service of this Order on the Tenant. 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.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$11,800.00 for rent owing for May 2023 to July 2023 and for the recovery of the filing fee for this application. The Landlord is provided with this Order on the above terms and the Tenant must be served with this Order as soon as possible. Should the

Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: July 20, 2023

Residential Tenancy Branch