



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, OLC, FFT
OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with an application filed by both the landlord and tenant pursuant to the Residential Tenancy Act (the “Act”):

The landlord applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

The tenant applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55 of the Act
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

SB (the “Landlord”), BH (the “Tenant”) and GC, the Landlord’s Agent appeared at the hearing.

BH testified that they served the Notice of Dispute Resolution Proceeding Package and their evidence by email to the Landlord and GC. The Landlord and GC testified that they did not receive the emails from BH. GC further noted that there is no agreement between the parties for service by email. The tenant testified that they communicate with the landlord by email.

Section 89 of the Act and section 43 of the Residential Tenancy Regulation (the Regulations) confirm a party may serve a Notice of Dispute Resolution Proceeding by email to an address provided by the other party for service of documents. In this case, while I accept that the email address used was used to communicate during the tenancy, I find there is insufficient evidence before me to confirm it was provided by the landlord for service of documents. Another method of service under section 89 of the Act should have been used.

Considering the above, I find Tenant's Notice of Dispute Resolution Proceeding and evidence was not served on the Landlord in accordance with the Act and the Regulations. As a result, I order that the Tenant's application in its entirety is dismissed with leave to reapply. Leave to reapply is not extension of any applicable timeline.

GC testified that they served the Tenant with their Notice of Dispute Resolution Proceeding Package and evidence by registered mail to the rental property address on June 8, 2023. In support, GC provided a Canada Post Tracking Number.

BH testified that they did not receive the Landlord's Notice of Dispute Resolution Proceeding Package and evidence.

I accept the affirmed testimony of GC that the Landlord's Notice of Dispute Resolution Proceeding Package and evidence was mailed to the Tenant by registered mail on June 8, 2023.

Residential Policy Guideline 12 discusses service provisions and states that a tenant's refusal to accept or pick up the registered mail does not prevent an arbitrator from deeming that mail received. Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if sent by registered mail on the fifth day after it is mailed. In this case, the Tenant is deemed to have received the materials on June 13, 2023, in accordance with section 90(a) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that this tenancy began on November 9, 2021. Monthly rent is \$1,600.00, due on the first day of the month. The Landlord collected a security deposit in the amount of \$800.00 which they continue to hold in trust.

GC testified that they served the Tenant with the 10-Day Notice by attaching it to the door of the rental unit on May 21, 2023. Two versions of the 10-Day Notice are submitted into evidence. One is signed and dated by GC and the other is unsigned. The Tenant confirmed that they received both 10-Day Notices.

GC testified that the 10-Day Notice was issued because the Tenant did not pay any rent in the month of May 2023. GC testified that since the 10-Day Notice was issued the Tenant has not paid any rent for June or July 2023. Rent is currently outstanding in the amount of \$4,800.00. GC testified that the Tenant has indicated to them that they will be vacating the rental property; however, the Landlord is seeking an Order of Possession and a Monetary Order for the unpaid rent.

In response to GC's testimony, the Tenant testified that that they did not pay rent in May after a situation occurred with the Landlord. The Tenant testified that they reported the situation to the police and charges may be pending against the landlord. The Tenant noted that they believe they have overpaid hydro during their tenancy as they have been paying the bill for the entire house when they reside only in the lower unit.

Analysis

Are the landlords entitled to an Order of Possession and Monetary Order for unpaid rent?

Based on the agreement of the parties, I find that the Tenant was served with the 10-Day Notice in accordance with section 89 of the Act on May 21, 2023.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act permits a landlord to end a

tenancy if rent is unpaid on any day after the day it is due by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

I have reviewed the 10-Day Notice that is signed by GC and was served to the tenant on May 21, 2023, and I find that it complies with the form and content requirements of section 52. As previously stated, the Tenants' application to cancel the 10-Day Notice is dismissed with leave to reapply for failure to serve the landlords with the Notice of Dispute Resolution Proceeding and evidence in accordance with the Act. As a result, the Landlord is entitled to an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the Tenants. The Tenant has two days to vacate the rental unit from the date of service or deemed service.

Since the application relates to a section 46 notice to end tenancy, the landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. The uncontested evidence of the Landlord is that rent is currently outstanding for the months of May, June, and June and July 2023 in the amount of \$4,800.00. Based on section 55(1.1) of the Act I order the Tenant to pay the outstanding \$4,800.00 in unpaid rent to the landlord.

The Landlord continues to hold the tenant's security deposit of \$800.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit in partial satisfaction of the monetary orders.

As the Landlord was successful in this application, they are entitled to recover the filing fee paid for there application from the Tenant.

Conclusion

The Landlord is granted an Order of Possession which will be effective two days after service upon the Tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of \$4,100.00 as follows:

Item	Amount
Rent due May, June, and July 2022 (\$1,600 x3)	\$4,800.00

Filing Fee	\$100.00
Security Deposit	-\$800.00
Total Monetary Order	\$4,100.00

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