



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 39 and 48 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 60 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 55 of the Act
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 39 and 48 of the Act
- a Monetary Order for unpaid rent under sections 20, 48 and 60 of the Act
- authorization to recover the filing fee for this application from the tenant under section 65 of the Act

Preliminary Matters

The rental unit in question is an RV trailer at an RV Park. Policy Guideline 9 states that an RV vehicle may fall under the MHPTA if the site is used as a place for a primary residence and not for short-term vacation or recreational use.

I find that the tenancy falls under the jurisdiction of the Act for the following reasons:

The landlord and tenant entered into a one year fixed term tenancy agreement on October 27, 2022.

The landlord agrees that the rental unit is the tenant's primary residence and that the trailer has not been moved since it arrived at the start of the tenancy.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

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 party, but will refer only to what I find relevant for my decision.

The landlord provided a copy of the tenancy agreement showing the tenancy started on October 27, 2023. Rent is \$700.00 a month, plus GST and electricity, and is due on the 27th day of each month.

The tenant provided a copy of the 10 Day Notice posted to the tenant's door by the landlord. It is dated September 3, 2023, and has a move out day of September 10, 2023. It requests \$700.00 plus GST that was due on August 27, 2023. The tenant filed his dispute on September 7, 2023.

The landlord agrees that rent for August 27 to September 27 of 2023 was received on September 20, 2023. However, the landlord affirms that rent for September 27 – October 27 of 2023 remains unpaid.

Analysis

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Section 39 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 39(5).

I find that the 10 Day Notice was duly served to the tenant on September 7, and that the tenant had until September 12, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The landlord affirms that the unpaid rent requested on the 10 Day Notice was not paid until September 20, 2023, more than 5 days after service of the 10 Day Notice. In addition, the landlord affirms that rent for September 27 to October 27 of 2023 remains unpaid.

For the above reasons, the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 39 and 48 of the Act is dismissed, without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under sections 39 and 48 of the Act.

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

Based on the evidence before me, I find that the landlord has established a claim for unpaid rent owing for from September 27 to October 27 of 2023.

The landlord affirms that \$735.00 is the monthly rent. However, according to the tenancy agreement this includes \$35.00 in GST being charged on the base rent of \$700.00.

Canada Revenue Agency does not require Landlords to collect the GST on long-term residential rents. Therefore, I find this to be an inappropriate fee and the landlord is not entitled to require its payment by the tenant.

I find the landlord is entitled to a Monetary Order in the amount of \$315.00 as follows:

September 27 – October 27 of 2023	\$700.00
Refund of GST collected on rent from October 27, 2023, to September 20, 2023. 11 months x \$35.00 GST = \$385.00	-\$385.00
Total	\$315.00

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation, or tenancy agreement?

As the 10 Day Notice was not cancelled and the landlord is being given an Order of Possession, this issue was not adjudicated and is dismissed, without leave to reapply.

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

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application under section 65 of the Act.

Conclusion

I grant an Order of Possession to the landlord **effective November 30, 2023, after service of this Order on the tenant(s)**. Should the tenant(s) 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.

Under section 60 of the Act, I grant the landlord a Monetary Order in the amount of **\$415.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 60 of the Act	\$315.00
authorization to recover the filing fee for this application from the tenant under section 65 of the Act	\$100.00
Total Amount	\$415.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: November 26, 2023

Residential Tenancy Branch