



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (T) CNR, RP
 (L) OPR, MNRL-S, LRSD, FFL

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 (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization that the Tenant's security deposit be applied to partially satisfy the monetary award
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing was also scheduled to address the Tenant's application to cancel the Landlord's 10 Day Notice and a request for repairs to the rental unit.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant J.B. was deemed served the fifth day after the Landlord sent the proceeding package to the Tenant on October 30, 2024, by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number as well as a completed and signed Proof of Service to confirm this service.

The Tenant did not submit proof of service of the proceeding package to the Landlord.

Service of Evidence

The Landlord confirmed that copies of the Landlord's evidence were included with the Notice of Hearing in the proceeding package served to the Tenant.

The Tenant submitted no evidence for this hearing.

Preliminary Matters

The Landlord's agent stated she had not received the Tenant's dispute resolution package nor was she aware the Tenant had filed an application for dispute resolution. The Tenant did not submit any confirmation that he had made service of his application to the Landlord as required by section 89(1) of the Act. Based upon the Tenant's failure to serve the dispute resolution proceeding package to the Landlord as well as the disposition of the Landlord's application, I dismiss the Tenant's application without leave to re-apply.

During the hearing the Landlord sought to increase their monetary claim in the amount of \$3,325.00 to reflect the Tenant's failure to pay rent due November 1, 2024,

Residential Tenancy Branch Rules of Procedure, Rule 7.12, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent the Tenant was aware of and resulted since the Landlord submitted the application.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

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

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed the evidence, and I have considered the testimony of the Landlord's agent, but will refer only to what I find relevant for my decision.

Evidence establishes the tenancy began on January 3, 2021 for a fixed term to January 31, 2022, and thereafter to continue on a month-to-month basis. The Tenant's current monthly rent is \$3,325.00. The Landlord confirmed the Tenant provided a security deposit in the amount of \$1,550.00, which the Landlord continues to hold in trust.

On October 19, 2024, the Landlord issued a 10 Day Notice to End Tenancy for unpaid rent in the amount of \$19,350.00 due as of October 1, 2024. The Notice was posted to the rental unit door on October 19, 2024. The Landlord submitted a copy of the Notice together with a completed proof of service, signed by a witness with a photograph, to confirm service of the Notice to the Tenant in the stated manner.

The Landlord's representative testified she spoke with the Tenant the day prior to the hearing and he informed her he would not be attending this hearing. The representative also testified the Tenant confirmed the amount of unpaid rent set forth in the Notice. The Landlord's representative stated the Tenant had not made any payment toward the unpaid rent and had not paid rent for November 2024.

Analysis

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Section 46 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 46(5). I find the 10 Day Notice issued by the Landlord on October 19, 2024, complies with section 52 of the Act.

I find the 10 Day Notice issued October 19, 2024 was deemed served to the Tenant on October 24, 2024 when the Landlord posted the Notice to the rental unit door (the statutory period as well as the 3-day period provided by the Act for service by posting to the door). The Tenant thus had until October 29, 2024, to dispute the 10 Day Notice or to pay the full amount of the unpaid rent. The Tenant filed for dispute resolution on October 24, 2024.

Based on the evidence before me, I find the Tenant failed to pay any rent within five days of receiving the 10 Day Notice and although the Tenant applied for dispute resolution under section 46(4) of the Act, the Tenant presented no evidence to support his position the Notice should be cancelled. In accordance with section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on November 1, 2024, the effective date on the 10 Day Notice. The Landlord's representative testified the Landlord was working to find alternate housing for the Tenant, and therefore a possession date of November 30, 2024, was acceptable.

Therefore, I find that the Landlord is entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find the Landlord has established a claim for unpaid rent owing from May (unpaid rent owing in the amount of \$2,725.00) as well as June through November, 2024, totaling \$22,675.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$22,675.00.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Section 72(2) of the Act provides that where, as here, there is a payment ordered from the tenant to the landlord, the security deposit may be applied toward that payment. Pursuant section 72(2) and the request of the Landlord, I authorize the Landlord to retain the Tenant's security deposit, plus accrued interest, in partial satisfaction of the Tenant's unpaid rent obligation.

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 72 of the Act.

Conclusion

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

I grant an Order of Possession to the Landlord **effective November 30, 2024 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.

I grant the Landlord a Monetary Order in the amount of **\$21,156.88** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$22,675.00
authorization for Landlord to retain Tenant's security deposit plus accrued interest in partial satisfaction of monetary award under section 72 of the Act	-\$1,618.12
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$21,156.88

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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

This decision is based on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 20, 2024

Residential Tenancy Branch