



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL, FFL**

Introduction

This hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for its application from the Tenant pursuant to section 72.

The Tenant, the Landlord and the Landlord's legal counsel ("RD") attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. A friend of the Tenant ("SJ") was on the line with the Tenant to provide support but did not participate in the hearing or provide testimony.

RD testified the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("NDRP Package") was served on the Tenant in-person on November 18, 2021. RD provided a sworn affidavit of the Landlord attesting to service of the NDRP Package on the Tenant. The Tenant acknowledged receipt of the NDRP Package. I find the NDRP Package was served on the Tenant pursuant to sections 88 and 89 of the Act.

The Tenant acknowledged that she did not serve any evidence on the Landlord.

Preliminary Matter – Service of Landlord's Additional Evidence on the Tenant

RD testified additional evidence of the Landlord was served through the Tenant's mail slot by courier on January 11, 2022. RD submitted a confirmation from the courier service corroborating his testimony on service of the Landlord's additional evidence.

The Tenant stated that she did not receive the additional evidence from the Landlord because she moved out of the rental unit on January 1, 2022.

. Section 44(1) of the Act states:

- 44 (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) 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) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.

The Tenant acknowledged that she did not give the Landlord written notice, or verbally advise the Landlord, that she was ending the tenancy so as to return possession of the rental unit to the Landlord.

Sections 44(1) and 45(1) state:

- 44 (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (b) [...]

- (i) section 45 [*tenant's notice*];
[...]

- 45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 88(f) of the Act states:

- 88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

[...]

- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

[...]

As the Tenant did not serve the Landlord with a written notice that she was ending the tenancy, the tenancy was not ended in accordance with section 44(1). The Landlord served his additional evidence on the Tenant's door pursuant to section 88(f) on the basis that the Tenant was still in possession of the rental unit. Based on the above, I find the Tenant was served with the Landlord's additional evidence pursuant to section 88 of the Act and, pursuant to section 90 of the Act, the Tenant was deemed to have been served with the Landlord's additional evidence on January 14, 2022.

Preliminary Issue – Amendment to Include Monetary Claim for Unpaid Rent

At the commencement of the hearing RD stated that the Tenant has additional rental arrears of \$3,600.00 that have accrued for an additional four months since the date of the two 10 Day Notices. SD stated the Landlord is seeking to recover rental arrears

owing by the Tenant for total of \$5,400.00 and request an amendment to the Landlord's application.

Rule of Procedure 4.2 of the RoP states:

4.2 Amending an application at the hearing

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.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Tenant has not given up possession of the rental unit, I find a claim for recovery by the Landlord's for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenant. Based on the above, I order that the Landlord's application be amended to claim \$5,400.00 for rental arrears pursuant to Rule 4.2.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for non-payment of rent?
- a Monetary Order for unpaid rent pursuant to section 67?
- authorization to recover the filing fee for its 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 Landlord's application and my findings are set out below.

RD testified there was no written tenancy agreement for this tenancy. RD stated that tenancy commenced on or about December 2020 on a month-to-month basis with rent of \$900.00 payable on the 1st day of each month. RD stated the Tenant was not

required to pay a security deposit or pet damage deposit. The Tenant confirmed the details of the tenancy provided by RD were correct.

RD Landlord testified the Landlord served the two 10 Day Notices for Unpaid Rent and/or Utilities dated September 8, 2021 (the "10 Day Notices") on the Tenant in-person on September 8, 2021. The first 10 Day Notice stated the Tenant did not pay rent of \$900.00 owing as of August 1, 2021. The second 10 Day Notice stated that the Tenant did not pay rent of \$900.00 owing as of September 1, 2021. The Tenant acknowledged she received the two 10 Day Notices in-person on September 8, 2021. The Tenant stated she did not make an application for dispute resolution to dispute the 10 Day Notices. The Tenant stated she moved out of the rental unit on January 1, 2021.

RD testified the Landlord did not receive any form of notice from the Tenant that she was vacating the rental unit and, as a result, the Landlord was not aware that the Tenant had abandoned the rental unit on January 1, 2021. RD stated the Tenant changed the locks on the door for the rental unit. RD stated the Tenant did not provide the Landlord with a copy of the new key for the lock and, as a result, the Landlord could not access the rental unit.

RD stated that the Tenant owed, as of the date of this hearing, a total of \$5,400.00 in rental arrears as follows:

Date	Rent Owed	Paid	Balance
01-Aug-21	\$900.00	\$0.00	\$900.00
01-Sep-21	\$900.00	\$0.00	\$1,800.00
01-Oct-21	\$900.00	\$0.00	\$2,700.00
01-Nov-21	\$900.00	\$0.00	\$3,600.00
01-Dec-21	\$900.00	\$0.00	\$4,500.00
01-Jan-21	\$900.00	\$0.00	\$5,400.00
Total	\$5,400.00	\$0.00	\$5,400.00

RD submitted that, as the Tenant had not given the Landlord at least one clear months' notice to vacate the rental unit before she abandoned the rental unit on January 1, 2022, the Landlord should be entitled to rental arrears for January 2022 in addition to the 5 months of rental arrears for the five-month period August through December 2021 inclusive.

The Tenant initially stated that she did not owe the Landlord for any rental arrears. However, the Tenant did not provide any evidence that she had made any payments for rent for August 1, 2021, and thereafter. The Tenant then testified she did not move out of the rental unit because she could not find affordable housing and that she was required to convalesce for 4 to 6 weeks after surgery. The Tenant stated the Landlord was severely harassing her. She stated the Landlord had denied her access to the washer and dryer, changed the password for the wi-fi service, turned off the electricity for the rental unit for more than 5 months with the result that her refrigerator was not working. However, the Tenant did not provide any evidence of such harassment or call witnesses to corroborate her testimony.

When I asked, the Tenant admitted she had not made: (i) an application for dispute resolution to seek an order for emergency repairs to the electrical service; or (ii) make an application to seek an order for the Landlord to requiring the Landlord provide access to the washer and dryer or wi-fi service or; (iii) for an order that the Landlord comply with the Act in respect of providing her with quiet enjoyment of the rental unit in respect of the alleged harassment by the Landlord. The Tenant did not provide any testimony or evidence to corroborate her assertion that she was not required to pay the Landlord any rent for the months of August 2021 through January 2022 inclusive.

The Landlord denied the Tenant's allegations that he harassed the Tenant, withheld use of the washer and dryer or turned off the electricity or the wi-fi service. The Landlord noted it would be odd for the Tenant to live in a basement unit without electricity for a period of 4 or 5 months as asserted by the Tenant without the Tenant taking any action against the Landlord.

Analysis

1. Landlord's Claim for Order of Possession

Sections 46(1) and 46(4) of the Act state:

- 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 Landlord served the two 10 Day Notices on the Tenant in person on November 18, 2021. Pursuant to section 46(4) of the Act, the Tenant had until November 23, 2021 to make an application for dispute resolution to dispute the two 10 Day Notices. The Tenant admitted at the hearing that she did not make an application. Pursuant to section 46(5)(a), the Tenant was conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, being September 18, 2021. The Tenant stated she did not vacate the rental unit until January 1, 2022. Although the Tenant is conclusively deemed to have accepted the tenancy ended on September 18, 2021, pursuant to section 46(5) of the Act, she has not vacated the rental unit. Pursuant to section 68(2)(1) of the Act, I find the tenancy ended January 27, 2022.

Sections 55(2), 55(3) and 55(4) of the Act 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.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (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.

[emphasis added in italics]

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. I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(4)(a) of the Act, I order the Tenant provide the Landlord with vacant possession of the rental unit.

Although I have found the tenancy has been ended pursuant to section 46(5) of the Act, I will nevertheless consider whether the Landlord has proven cause to end the tenancy. Subsection 26(1) of the Act states:

- 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.*

[emphasis added in italics]

The Act provides very limited and specific circumstances when a tenant may withhold rent such as: (i) where a tenant has overpaid a security deposit and/or pet damage deposit; (ii) where a tenant has previously overpaid the rent; (iii) where authorization has been given by the landlord or an arbitrator or; (iv) where the landlord does not reimburse the tenant for emergency repairs that have been made by the Tenant.

RD testified an additional \$3,600.00 in rental arrears had accrued since the date of the First and Second 10 Day Notices for a total of \$5,400.00 for rental arrears covering the period from August 1, 2021, to January 1, 2022. The Tenant stated that she was unable to move out of the rental unit after she was served with the two 10 Day Notices because she was unable to find alternative affordable housing and that she had surgery which required convalesce for 4 to 6 weeks. The Tenant also asserted that the Landlord did not comply with the Act as he had turned disconnect the electrical, change the password for the wi-fi service and harassed her. However, Subsection 26(1) states a tenant must pay the rent when it is due under the tenancy agreement. The Tenant provided a number of reasons for why she did pay the rent to the Landlord. However, the Tenant did not provide any testimony or evidence at the hearing to prove that she had a right under the Act to deduct all or a portion of the rent. As such, I find that the Tenant did not have a right to deduct or a portion of the rent for any of the months of August 2021 through January 2022 as required by section 26(1) of the Act. Based on the above, I find that Landlord had cause to serve the Tenant with the 10 Day Notice for rental arrears owing as of the date of the 10 Day Notice.

2. Monetary Order for Unpaid Rent:

As noted above, the tenant admitted that she did not dispute the two 10 Day Notices. Section 55(4)(b) of the Act provides that, if the application of the Landlord is in relation to non-payment of rent and the Tenant has not made an application to dispute the notice, I may grant an order requiring payment of the unpaid rent.

Based on the testimony of, and evidence submitted, by the parties, I am satisfied the Tenant owes the Landlord a total of \$5,400.00 for rental arrears from August 1, 2021 to the date the tenancy ended on January 27, 2022. Pursuant to subsection 55(4)(b), I find the Landlord is entitled to a Monetary Order for \$5,400.00 for rental arrears for August 1, 2021, through January 1, 2022 inclusive.

3. Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in his application, he may recover the \$100.00 filing fee for his application from the Tenant pursuant to section 65(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 attached order 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 that the Tenant pay the Landlord \$5,500.00, representing the following:

Description	Amount
Rental Arrears for August 1, 2021 to January 1, 2022, inclusive	\$5,400.00
Landlord's Filing Fee for Application	\$100.00
Total	\$5,500.00

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: February 10, 2022

Residential Tenancy Branch