



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkland Place
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Tenant: CNR-MT, CNC
For the Landlord: OPR-DR, MNR-DR, FFL

Introduction

On December 8, 2021 the Tenants (hereinafter the “Tenant”) applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the landlord on December 2, 2021. On this piece of the Application, the Tenant requested more time to dispute the notice. Additionally, they applied for a cancellation of the One-Month Notice to End Tenancy for Cause issued by the Landlord on November 22, 2021.

On January 19, 2022 the Landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. This was in line with the 10-Day Notice they issued on January 5, 2022. Additionally, they applied for reimbursement of the Application filing fee. The Landlord’s Application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 24, 2022. The Landlord’s agent (hereinafter the “Landlord”) attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the notice of this hearing. This means the Landlord must provide proof that the document was served in a verified manner allowed under s.

89 of the *Act* and I must accept that evidence. In the hearing the Landlord provided that they served a copy of that document via registered mail to the Tenant on February 2, 2022. They provided proof of registered mail with tracking numbers. From this evidence I am satisfied the Landlord served the document in a manner prescribed by the *Act*. By s. 90 of the *Act*, I deem the documents served to the Tenant on February 7, 2022.

The Tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:14 a.m. to enable them to call in to this teleconference hearing scheduled for 11:00 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's Application. This is without leave to reapply on the two issues therein.

The Landlord in the hearing advised they did not receive notice of the Tenant's Application for Dispute Resolution. The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution. Subsection (3) states: ". . .a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. . ."

In addition to the Tenant not attending the hearing, I dismiss their Application for the reason they did not notify the Landlord of it.

Issue(s) to be Decided

Is the Landlord entitled to issue an Order of Possession pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord spoke to the terms of the tenancy agreement, a copy of which they provided as evidence. The tenancy began on July 1, 2021 for a fixed term to end on June 30, 2022. The rent amount, as indicated on the tenancy agreement, was \$1,100 per month payable on the first day of each month. Being on social assistance for their rent, the actual rent payable by the Tenant was \$830 per month. Payments of the assistance for the Tenant by the government ended as of February 2022, making the Tenant liable for the full amount of \$1,100 per month.

The Landlord provided a copy of the 10-Day Notice, issued January 5, 2022. This document gave the move-out date of January 15, 2022. This listed the failure of the Tenant to pay the total rent amount owing of \$4,150. The Landlord served this document by registered mail on January 5, 2022, as provided in the postage receipt and tracking information the Landlord provided in their evidence.

The Landlord provided their breakdown of the accumulated rent on their Direct Request Worksheet. This is the accumulation of \$830 per month for each of September 2021 through to January 2022, totalling \$4,150 as indicated on the 10-Day Notice.

In addition, the Landlord in the hearing presented that more rent accumulated when the Tenant overstayed in the rental unit after service of the 10-Day Notice on January 5. As of the date of the hearing, the Tenant remained in the rental unit. For this hearing, the Landlord updated their monetary claim to add the full rent amount for the months of February and March, 2022, totalling \$2,200. This makes the total amount owing \$6,350.

Analysis

From the evidence and testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the Tenant was meant to pay each month.

I accept the evidence before me that the Tenant failed to pay the rent owed in full by January 15, 2022, within the five days granted under s. 46(4) of the *Act* and factoring in the deemed service date of January 10, 2022 as per s. 90(a). The Tenant did not dispute this 10-Day Notice within that five-day period. The Tenant is conclusively

presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective day of the 10-Day Notice, January 15, 2022.

On my review of the document, the One-Month Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the Landlord is entitled to an Order of Possession.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the Tenant failed to pay full rent for September 2021 through to the present month March 2022, while maintaining occupancy of the rental unit. As presented, I find the Landlord is entitled to the amount of \$6,350 as they claim.

As the Landlord was successful in their Application, I find that they are entitled to recover the \$100.00 filing fee paid for their Application.

Conclusion

In the absence of the Tenant in the hearing, I dismiss their application in its entirety and without leave to re-apply.

Under s. 55(1) and s. 55(3) of the *Act*, I grant an Order of Possession effective two days after service of this Order on the tenant. Should the Tenant 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 s. 67 and s. 72 of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$6,450. The Landlord is provided with this Order in 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 s. 9.1(1) of the *Act*.

Dated: March 25, 2022

Residential Tenancy Branch