



Dispute Resolution Services

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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 for dispute resolution ("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 and/or utilities pursuant to section 55; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:32 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord stated he served the NDRP and his evidence (collectively "NDRP Package") in the Tenant's mailbox February 11, 2022. The Landlord stated he also served the NDRP Package on the Tenant by registered mail on March 10, 2022. The Landlord provided the Canada Post tracking number for service of the NDRP Package to corroborate his testimony. I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the NDRP Package was deemed to have been received by the Tenant on February 16, 2022.

The Landlord stated the Tenant did not serve any evidence on him for the hearing.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for unpaid rent?
- authorization to recover the filing fee of the 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 Application and my findings are set out below.

The Landlord testified there is no written tenancy agreement between him and the Tenant. The Landlord stated the tenancy commenced approximately 15 years ago. The Landlord stated the current rent is \$725.00 and is payable on the 1st day of each month. The Landlord stated the Tenant was not required to pay a security and/or pet damage deposit.

The Landlord stated the Tenant suffered a serious injury and was hospitalized in 2021. The Landlord stated that, according to the Tenant's social worker, the Tenant was not expected to be returning to the rental unit. The Landlord stated that, after the accident, he had initially been paid the rent through the Tenant's social worker from time to time. The Landlord stated the last payment for rent was made in November 2021. The Landlord stated that Tenant's social worker told him the Tenant did not have any further money to continue paying the rent.

The Landlord stated the 10 Day Notice was served in the Tenant's mailbox on January 10, 2022. The Landlord submitted a signed Proof of Service on Form RTB-34 to corroborate his testimony. I find the 1 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act. The 10 Day Notice stated the effective date for mov-out was January 20, 2022.

The Landlord testified the 10 Day Notice stated Tenant had rental arrears of \$1,450.00 for December 2021 and January 2022 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Dec-21	\$725.00	\$0.00	\$725.00
01-Jan-22	\$725.00	\$0.00	\$1,450.00
Total	\$1,450.00	\$0.00	\$1,450.00

Analysis

1. Landlord's Claim for Order of Possession

The undisputed testimony of the Landlord was he served on the 10 Day Notice on the Tenant's door on January 10, 2022. Pursuant to section 90, the Tenant was deemed to have received the 10 Day Notice on January 13, 2022.

Sections 46(1) through 46(5) 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]

Pursuant to section 46(4) of the Act, the Tenant had until January 18, 2022, to either pay the rental arrears or make an application for dispute resolution to dispute the 10 Day Notice. I find the Tenant did not pay the rental arrears owing as of the date of the 10 Day Notice within the five-day dispute period. There is no evidence the Tenant made an application for dispute resolution to dispute the 10 Day Notice within the five-day dispute period.

Sections 46(1) through 46(5) 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]

Based on the undisputed testimony of the Landlord, I find the Tenant owed the Landlord \$1,450.00 for rental arrears as of the date of the 10 Day Notice. 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 form and content requirements of section 52 of the Act.

I find the Landlord has established cause under section 46 of the Act. Pursuant to section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the 10 Day Notice, being January 20, 2022. However, the Tenant has not vacated the rental unit.

Sections 55(2) and 55(4) 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.

[...]

(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.

Pursuant to section 5(4)(a) of the Act, I grant the Landlord an Order of Possession requiring the Tenant vacate the rental unit.

2. Monetary Order for Unpaid Rent:

As noted above, I have found the Tenant owes the Landlord \$1,450.00 for rental arrears. 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. Pursuant to subsection 55(4)(b), I find the Landlord is entitled to a Monetary Order for \$1,450.00 for rental arrears for December 2021 and January 2022.

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 the 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 of Possession 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 \$1,550.00, representing the following:

Description	Amount
Rental Arrears for December 2021 and January 2022	\$1,450.00
Landlord's Filing Fee for Application	\$100.00
Total	\$1,550.00

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: May 11, 2022

Residential Tenancy Branch