



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"). The Landlord applied 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 Landlord's their application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:23 am in order to enable the Tenant to call into this teleconference hearing scheduled for 11:00 am. The Landlord and the Landlord's legal counsel ("BL") attended the hearing and were 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, BL and I were the only ones who had called into this teleconference.

BL stated the NDRP was served on the Tenant by registered mail on March 17, 2022. BL submitted the tracking number and tracking information for service of the NDRP on the Tenant. BL stated the Landlord also served the NDRP on the Tenant's door on June 2, 2022. BL submitted into evidence a sworn affidavit of the Landlord in which she attested to personally serving the Tenant with the NDRP on June 2, 2022. Based on the undisputed affidavit of the Landlord, I find the NDRP was served on the Tenant in accordance with the provisions of section 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have been served with the NDRP on March 22, 2022.

The Landlord stated she served her evidence on the Tenant's door on June 8, 2022. Based on the undisputed testimony of the Landlord, I find the Landlord's evidence was served in accordance with section 88 of the Act. Based on section 90, I find the Tenant was deemed to have been served with the Landlord's evidence on June 11, 2022.

Preliminary Matter – Removal of Applicant from Application

At the outset of the hearing, I noted that the law firm ("BN") representing the Landlord was named as an applicant in the Application. BL made a request that I amend the Application remove BN as an applicant.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* 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.

The Tenant could reasonably have anticipated the Landlord would seek an amendment to remove an applicant from the Application that was not a party to the tenancy agreement, or an agent of the Landlord. Pursuant to Rule 4.2, I order the Application be amended to remove BN as an applicant.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for unpaid rent?
- a Monetary Order for unpaid rent?
- recovery of the filing fee for 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 stated the rental unit is self-contained and the Tenant does not share kitchen or bathroom facilities with the Landlord. The Landlord stated there is no written tenancy agreement and that the tenancy was made by the parties pursuant to an oral agreement. The Landlord stated the tenancy commenced on September 1, 2021, on a month-to-month basis, with rent of \$500.00 payable on the 1st day of each month. The Landlord stated that the Tenant was not required to pay a security or pet damage deposit to the Landlord.

BL submitted into evidence a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated February 24, 2022 ("10 Day Notice") and stated it was served by the Landlord on the Tenant's door on February 24, 2022. BL submitted a sworn affidavit dated March 8, 2022 in which the Landlord attested she posted the 10 Day Notice on the basement suite door. BL stated the 10 Day Notice had an effective date ("Effective Date") for move-out on March 8, 2022. The 10 Day Notice stated the Tenant had rental arrears of \$1,500.00 as of February 1, 2022, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Dec-21	\$500.00	\$0.00	\$500.00
01-Jan-22	\$500.00	\$0.00	\$1,000.00
01-Feb-22	\$500.00	\$0.00	\$1,500.00
Total	\$1,500.00	\$0.00	\$1,500.00

The Landlord stated the Tenant owed her a further \$2,000.00 for unpaid rent or for compensation for overholding the rental unit for the months of March through June 2022 inclusive and sought to increase her claim to include the additional rental arrears of \$2,000.00.

The Landlord stated she was unaware of the Tenant making any application for dispute resolution to dispute the 10 Day Notice.

Analysis

1. Landlord's Claim for Order of Possession

Subsection 26(1) and 46(1) through 46(5) of the Act state:

- 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.
- 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 undisputed testimony of Landlord was she served the 10 Day Notice was served on the Tenant's door on February 24, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have been served with the 10 Day Notice on February 27, 2022. Pursuant to section 46(4), the Tenant had until March 4, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. The Landlord stated she was unaware of the Tenant making an application to dispute the 10 Day Notice.

Based on the undisputed testimony of the Landlord, I find the Tenant owed the Landlord \$1,500.00 as of March 1, 2022. As such, I find the Landlord has satisfied her onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. Pursuant to section 46(5), the Tenant was conclusively presumed to have accepted that the tenancy ended on the Effective Date.

Subsections 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.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Pursuant to section 46(5)(1), I find the tenancy ended on the Effective Date, being March 8, 2022. As the Tenant has not vacated the rental unit, pursuant to section 55(2) I order the Tenant provide the Landlord with vacant possession of the rental unit.

2. Monetary Order for Unpaid Rent:

As noted above, I have found that the Tenant had rental arrears of \$1,500.00 as of February 1, 2022 and the tenancy ended on March 8, 2022. The Landlord also sought rent for the months of March through June 2022 inclusive in the amount of \$2,000.00. Subsection 57(3) of the Act states:

57(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Policy Guideline 3 ("PG 3") provides guidance, among other things, on situations where a landlord may seek unpaid rent or, where the tenancy has ended pursuant to conclusive presumption under section 46(5)(a) of the Act. PG 3 states in part:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit

or site.

[emphasis in italics added]

Accordingly, the landlord must seek compensation where the tenant overholds the rental unit after the tenancy has ended pursuant to subsection 57(3) of the Act. In her Application, the Landlord made a claim for unpaid rent but did not make a claim to seek monetary compensation for the Tenant overholding the rental unit. As such, the Landlord is not entitled to seek rental arrears after the Effective Date. In these circumstances, the Landlord has the option of making an application for dispute resolution to seek compensation for the time the Tenant overholds the rental unit rental after the Effective Date as stated in PG 3.

As noted above, I have found the Tenant had rental arrears of \$1,500.00 as of February 1, 2022. Pursuant to section 55(4)(b) of the Act, I order the Tenant pay the Landlord \$1,500.00 in satisfaction of the rental arrears owed.

3. Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in her claims, she may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 72(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 the 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 the Tenant pay the Landlord \$1,600.00, representing the following:

Description	Amount
Rental Arrears for December 2021 through to February 2022 inclusive	\$1,500.00
Landlord's Filing Fee for Application	\$100.00
Total	\$1,600.00

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: July 13, 2022

Residential Tenancy Branch