



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), under section 46.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 11:15 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by agent KW (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 Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Service of the tenant's application

The landlord affirmed she did not receive the tenant's notice of hearing. The landlord called the Residential Tenancy Branch and learned about the tenant's application.

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

(emphasis added)

Based on the landlord's testimony, I find the tenant did not serve the notice of hearing.

I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

Service of the landlord's application

The landlord served the notice of hearing and the evidence (the landlord's materials) via registered mail on October 27, 2022. The landlord mailed the package to the rental unit's address. The tracking number is recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the tracking number, I find the landlord served the materials on October 27, 2022, in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on November 01, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend the application for \$1,699.00 in unpaid rent to include an additional \$3,398.00 for the unpaid rent of November and December 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$5,097.00.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on June 01, 2018. Monthly rent is \$1,699.00, due on the last day of the prior month. At the outset of the tenancy a security deposit (the deposit) of \$817.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord attached the Notice to the rental unit's front door on October 01, 2022.

The landlord submitted into evidence a witnessed proof of service (RTB34) indicating the Notice was attached to the rental unit's front door on October 01, 2022.

The landlord submitted a copy of the October 01, 2022 Notice. It indicates the tenant did not pay rent in the amount of \$1,699.00 due on September 30, 2022. The effective date is October 11, 2022.

The landlord affirmed the tenant has not paid rent and continues to occupy the rental unit.

The landlord is claiming for an order of possession and a monetary order for rental arrears in the amount of \$5,097.00 for October, November and December 2022 rent.

The landlord submitted a direct request worksheet into evidence.

Analysis

I accept the uncontested testimony that the landlord served the Notice on October 01, 2022, in accordance with section 88(g) of the Act. Per section 90(c) of the Act, the tenant is deemed to have received the Notice on October 04, 2022.

Order of possession

Based on the landlord's convincing testimony and the tenancy agreement, I find that the landlord and the tenant agreed to a tenancy and the tenant was obligated to pay the monthly rent in the amount of \$1,699.00 on the last day of the prior month.

Pursuant to section 46(1) of the Act, 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.

Based on the landlord's convincing testimony, the Notice, and the direct request worksheet, I find the tenant has not paid October, November and December 2022 rent in the amount of \$1,699.00 per month.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord's agent, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Section 68(2) of the Act states:

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

Based on the above, as the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(a)(ii) and 68(2)(a) of the Act.

I award the landlord an order of possession, per section 55(2)(b) of the Act.

Monetary order

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Per section 26(1) of the Act, I award the landlord October, November and December 2022 in the amount of \$5,097.00 (\$1,699.00 x 3 months).

Filing fee, deposit and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$817.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent October, November and December 2022 (\$1,699.00 x 2)	5,097.00
Filing fee	100.00
Subtotal	5,197.00
Deposit (minus)	817.00
Total:	4,380.00

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord 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.

Per sections 26, 38 and 72 of the Act, I authorize the landlord to retain the \$817.00 deposit and award the landlord \$4,380.00. The landlord is provided with this order in the above terms and the tenant must be served with this order. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 13, 2022

Residential Tenancy Branch