



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, OPC, MNRL, MNDCL

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. an Order of Possession based on a 10-Day Notice to End Tenancy (the 10-Day Notice) for unpaid rent pursuant to sections 46 and 55;
2. an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One-Month Notice) pursuant to sections 47 and 55 of the Act;
3. a Monetary Order for unpaid rent pursuant to section 67 of the Act; and
4. a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act.

DH (the “landlord”) appeared at the hearing.

The landlord testified that they served the Notice of Dispute Resolution Proceeding and supporting documents on the tenant by process server on March 3, 2023. In support of this, the landlord provided an Affidavit of Service from the process server indicating that the Notice of Dispute Resolution Proceeding and supporting documents were served to the tenant by posting the documents to the door of the rental unit on March 3, 2023, at 3:21 p.m.

The landlord further testified that they served the Amendment to the Application for Dispute Resolution by process server on the tenant on March 17, 2023. In support of this, the landlord provided an Affidavit of Service from the process server indicating that the landlord’s Amendment to the Dispute Resolution Application was served to the tenant by posting the documents to the door of the rental unit on March 17, 2023, at 3:05 p.m.

Finally, the landlord testified that she served additional supporting evidence on the tenant by process server on March 20, 2023. In support of this, the landlord provided an Affidavit of Service from the process server indicating that the additional evidence was

served to the tenant by posting the documents to the door of the rental unit on March 20, 2023, at 11:54 a.m.

Based on the documentary evidence and undisputed affirmed testimony of the landlord, I find pursuant to section 71(2)(c) of the Act that the tenant was sufficiently served with all required documents for the hearing.

The landlord was given full opportunity under oath to be heard, to present evidence and to make submissions. The landlord confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenant did not appear at the hearing. The hearing proceeded in the tenant's absence pursuant to Rule of Procedure 7.3.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10-Day Notice?
Is the landlord entitled to an Order of Possession based on the One Month Notice?
Is the landlord entitled to a Monetary Order for unpaid rent?
Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided affirmed testimony that the tenancy began on June 1, 2021. Rent is \$2,650.00 due on the first day of the month. The landlord collected a security deposit of \$2,650.00 which they continue to hold in trust. A copy of the written tenancy agreement is submitted into evidence.

The landlord testified that they served the 10-Day Notice to End Tenancy on the tenant on March 3, 2023, by registered mail. TF testified that they attended the post office with the landlord and witnessed the landlord mail the package containing the 10-Day Notice to the tenant. In support of this the landlord has included a Canada Post tracking document showing that the package was delivered on March 7, 2023.

Page two of the Notice indicates that the tenant did not pay rent in the amount of \$2,650.00 that was due on March 1, 2023. The landlord testified that since the Notice was issued, the tenant has failed to pay rent for the month of April 2023. Rent is currently outstanding in the amount of \$5,300.00. The landlord is seeking an Order of Possession and Monetary Order for Unpaid rent.

All pages of the 10-Day Notice were served and submitted into evidence. The tenant has not disputed the Notice.

The landlord is also seeking monetary claims to cover the costs they incurred for: the service of documents by registered mail and process server; certified translation; and the application costs for this dispute and two Direct Request Proceedings. The landlord testified that they believe they are entitled to recover these costs.

Analysis

Based on the uncontested affirmed testimony of the landlord and their witness and in accordance with section 88 and 90 of the Act, I find that the 10-Day Notice was served on the tenant on March 3, 2023, by registered mail, and is deemed to have been received by the tenant on March 8, 2023, the fifth day after it was sent by mail.

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

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due by issuing a 10-Day notice to end tenancy which must comply with section 52 (form and content) of the Act. Upon receipt of a notice to end tenancy issued under section 46 of the Act, a tenant has 5 days to either pay the overdue rent or file an application disputing the notice as per section 46(4). If a tenant fails to comply with the 5 day deadline, section 46(5) is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the date of the 10 Day Notice, March 19, 2023 pursuant to section 53(2) of the Act.

Section 55(2)(c) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an

application to dispute the notice, and the time for making any such application has expired.

In this case, the landlord served the 10-Day Notice in accordance with the Act, the 10-Day Notice complies with section 52 of the Act, and the tenant has not made an application to dispute the 10-Day Notice. As such, I find that the landlord has proven on a balance of probabilities that they are entitled to an order of possession.

I find that the landlord is entitled to an order of possession pursuant to section 55(4)(a) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(4)(b) of the Act. I accept the undisputed affirmed testimony of the landlord that the tenant has not paid rent for the months of March and April 2023. Therefore, the tenant is ordered to pay the landlord \$5,300.00.

The landlord applied for additional monetary relief based on section 67 of the Act. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Based on the Residential Tenancy Branch Rules of Procedure, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. Policy Guideline #16 requires that the applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. In this case, the onus is on the landlord to prove their entitlement to the monetary claims sought.

I have considered the landlord's claims and I find that the relief sought is not in relation to damage or loss directly caused by the tenant's failure to comply with this Act regulation, or tenancy agreement. Rather the landlord is seeking reimbursement for costs associated directly with the process of dispute resolution. On that basis, I find that the landlord has not established that they are entitled to the monetary claims sought. The landlord's claims for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement based on section 67 of the Act are therefore, dismissed without leave to reapply.

The landlord applied for an Order of Possession based on the One-Month Notice. However, this matter is moot given that the tenancy is ending is ending based on the 10-Day Notice.

Conclusion

The landlord is granted an order of possession which will be effective two days after service upon the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$5,300.00 as follows:

Item	Amount
Rent due March and March 2023 (2 x \$2,650.00)	\$5,300.00
Total Monetary Order	\$5,300.00

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 11, 2023

Residential Tenancy Branch