



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: CNR

LL: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on December 6, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent.

The Landlord’s Application for Dispute Resolution was made on December 26, 2022 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant’s father B.H. and the Landlord’s Agent K.S. attended the hearing at the appointed date and time. At the start of the hearing, B.H. stated that he attended the hearing only to provide a message and that he was not representing the Tenant. B.H. stated that the Tenant is currently taking exams at school and requests an adjournment so that the Tenant could attend the hearing.

In response, K.S. stated that the Tenant has made no mention of being unable to attend the hearing. K.S. stated that the Tenant is just trying to delay the hearing. K.S. was not

in support of an adjournment given the length of time that the Tenant had to reschedule the hearing but failed to do so. K.S. stated that rent has not been paid for several months.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure (the “Rule of Procedure”) 7.9, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

In this case I find that the Tenant provided no evidence to support that they are in school and have exams at the same time of the hearing, preventing them from attending the hearing. I find that by taking reasonable steps the Tenant could have contacted the Residential Tenancy Branch in advance, to reschedule the hearing or appoint a representative to attend the hearing on their behalf. I note that the Tenant’s father clearly stated that they were not in a position to represent the Tenant.

I find that adjourning the hearing would prejudice the Landlord as the Tenant had over four months from the date of their application to make alternate arrangements should they not be able to attend the hearing themselves. I therefore decline the request to adjourn the hearing. The hearing continued in the absence of the Tenant or a representative acting on behalf of the Tenant, as B.H. disconnected himself from the teleconference hearing.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenant, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenant’s Application, I therefore dismiss the Tenant’s Application in its entirety without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession and a monetary order for unpaid rent, pursuant to section 55 of the *Act*.

In addition, the Landlord had submitted their own Application for an order of possession and a monetary order relating to unpaid rent. The Landlord is also seeking the return of the filing fee. The Landlord's Agent stated that they served the Landlord's Application and documentary evidence to the Tenant by Canada Post Registered Mail on January 5, 2023. The Landlord submitted a copy of the Registered Mail receipts in support. Pursuant to Section 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant 5 days later, on January 10, 2023.

The Landlord's Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent confirmed the following terms of the tenancy; the tenancy began on June 1, 2022. Currently, rent in the amount of \$4,000 is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the

amount of \$2,000.00 which the Landlord currently holds. The Tenant continues to occupy the rental unit. A tenancy agreement was provided in support.

The Landlord's Agent stated that the Tenant failed to pay rent for December 2022. The Landlord's Agent stated that he subsequently served the Tenant a 10 Day Notice by email on December 1, 2022. The Landlord's Agent stated that he later recognized that email was not an approved form of service, therefore, the Landlord re-issues a new 10 Day Notice on December 12, 2022. The Landlord's Agent stated that he has issued another 10 Day Notice on January 17, 2023 given the amount of unpaid rent continues to increase each month. The Landlord provided a copy of each 10 Day Notice in support.

The Landlord's Agent stated that the most recent 10 Day Notice is dated January 17, 2023 with an effective date of January 27, 2023 (the "10 Day Notice") The Landlord stated that the amount of unpaid rent owing at that time was \$8,000.00.

The Landlord's Agent stated that he served the 10 Day Notice by posting it on the Tenant's door on January 17, 2023. The Landlord submitted a proof of service form and pictures in support. The Landlord's Agent stated that the Tenant owed \$4,000.00 for December, and \$4,000.00 for January 2023 rent.

The Landlord's Agent stated that the Tenant paid \$3,600.00 on January 31, 2023 and a further \$3,000.00 on March 11, 2023. The Landlord's Agent stated that no other payments were made to the Landlord. The Landlord's Agent stated that the Tenant currently owes rent in the amount of \$13,400.00 for December 2022 to April 2023, less the two payments made.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agent testified that he served the Tenant with multiple 10 Day Notices each month that the Tenant failed to pay rent with the 10 Day Notice dated January 17, 2023 being the most recent one provided in evidence. I accept that the Tenant applied to dispute the first 10 Day Notice, however, as no one attended the hearing for the Tenant in support of their Application, the Tenant's Application to cancel the 10 Day Notices is dismissed.

According to Section 55 of the *Act*: (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the 10 Day Notice dated January 17, 2023 complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of **\$13,400.00**. I further find that the Landlord is entitled to recover the **\$100.00** filing fee paid to make their Application. I find it

appropriate in the circumstances to order that the Landlord retain the \$2,000.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$11,500.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$13,400.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$2,000.00</i>)
TOTAL:	\$11,500.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$11,500.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 17, 2023

Residential Tenancy Branch