



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11059236

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: 150 Wakesiah Ave, Nanaimo, BC

Date of Hearing: April 07, 2020, by conference call.

Date of Decision: April 08, 2020

Attending:

s.22

For the Landlord:

s.22

For the Tenant:



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other's evidence packages.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on May 1, 2018 and ended on October 31, 2019. Rent of \$1,300.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit and still holds that deposit. The Landlord received the Tenant's forwarding address on either November 1 or 2, 2019. The Parties mutually conducted both a move-in and move-out inspection.

The Landlord states that its application was made on November 14, 2019 and that the filing fee was paid on that same day. The Landlord states that an error in checking off a wrong box was made in the application and that the application was resubmitted on November 21, 2019.

The Landlord states that at move-in the inspection report was completed, signed and copied to the Tenant. The Tenant states that the Landlord did not fill out any inspection report at move-in and did not provide the Tenant with a copy of any move-in report. The Tenant states that the Landlord gave the Tenant a copy of the move-in inspection report at the move-out inspection. The Tenant states that at move-out it mistakenly signed the move-in report in the area provided for any disagreement with the report. The Tenant states that as a result it did not sign the move-out report where its signature was required. The Tenant states that it wrote comments and provided its forwarding address on the move-out report. The Landlord states that this was its first experience with an inspection, and it was sloppy. The Landlord states that it did complete the report and then emailed a copy to the Tenant. The Landlord cannot recall any details around the completion of the report and states that its memory does not match the Tenant's oral evidence. The Landlord states that the Tenant refused to sign the move-out report and that "I think that aligns with how I remember it".

The Landlord states that the Tenant left the unit with damages. The Landlord provides copies of a move-in and move-out report and photos of the unit.

The Landlord states that at the onset of the tenancy the Tenant did not like the color of the paint on the bedroom walls and was given permission to paint this room with the Landlord's paint on hand. The Landlord states that the walls had previously been painted in 2016. The Landlord states that the Tenant only applied primer to the walls leaving them incomplete at the end of the tenancy. The Landlord claims \$462.00 and provides a quote for this amount. The Landlord states that it painted the walls himself with its own paint. The Landlord states that it incurred no costs other than its own time.

The Tenant states that the Landlord saw the unfinished walls when it showed the unit on October 15, 2019. The Tenant states that the Landlord did not say anything to the Tenant about its completion. The Tenant argues that the Landlord is responsible for regularly painting the unit.

The Landlord states that the Tenant did not clean the unit at move-out. The Landlord claims \$230.00 and provides a quote for this amount. The Landlord states that it did the move-out clean with the help of the new tenants. The Tenant states that the photos provided by the Landlord were taken before the Tenant had completed its move out and cleaning of the unit. The Tenant states that it left the unit reasonably clean. The Landlord states that the Tenant did remove its final belongings after the photos were taken but did not clean the unit at all.

Analysis

Section 23(5) of the Act provides that Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Section 18(1)(a) of the Regulations provides that the landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed. Section 24(2)(c) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The move-in inspection report includes an area for the Tenant's signature identified as section 3 on the third page however there is no signature by the Tenant. The move-in report does include the Tenant's signature in the area stated by the Tenant. The Landlord has given evidence of being sloppy with the move-in inspection and has given vague evidence of completing the report. This tends to support the Tenant's evidence

that the Landlord did not give a completed report to the Tenant for signature at move-in. Further the Landlord provided no evidence of when the move-in report was provided to the Tenant and no supporting evidence that the report was given to the Tenant as required while the Tenant's evidence is that no report was provided to the Tenant until move-out when it was shown to the Tenant. For these reasons I find on a balance of probabilities that the Landlord did not complete the report and give the Tenant a copy as required under the regulations. As a result, I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay, any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

As the Landlord's application is dated November 21, 2019, as the Landlord has provided no supporting evidence that the filing fee for the application was paid in advance of this date, and given the undisputed evidence that the Landlord received the Tenant's forwarding address no later than November 2, 2019, I find on a balance of probabilities that the Landlord did not make its application within the time required. Further as the Landlord's right to claim against the security deposit was extinguished at move-in I find that the Landlord only had the option of returning the security deposit to the Tenant and independently making an application to claim for damages to the unit. As the Landlord did not return the security deposit to the Tenant or make its application

within the time allowed, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,300.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. While the Tenant may or may not have left the unit unclean, as the landlord did not provide any evidence of the hours or costs of its labour and no evidence that it incurred the costs claimed, I find on a balance of probabilities that the Landlord has not substantiated the cleaning costs claimed and I dismiss this claim.

While a landlord is required to maintain the life of interior paint, given the Landlord's evidence that the paint was less than 4 years old I consider that the Landlord would not have had to paint the bedroom walls for at least another year. It is undisputed that there was a mutual agreement for the Tenant to paint the bedroom walls as the Tenant did not like the existing color at move-in. There is no evidence of a mutual agreement for a partial painting of the walls or that the Tenant was not aware on October 15, 2019 that the job was still incomplete thereby requiring the Landlord to draw this to the Tenant's attention. I therefore find on a balance of probabilities that the Landlord has substantiated that the Tenant breached the agreement. As the Landlord did not provide any evidence to support that it incurred the costs claimed, I find that the Landlord is only entitled to a nominal sum of **\$100.00** for the Tenant's breach.

As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$200.00**. Deducting this

from the **\$1,300.00** owed to the Tenant leaves **\$1,100.00** to be returned to the Tenant forthwith.

Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for **\$1,100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 08, 2020



R. Weitzel, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

Now that you have your decision...

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110004552

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

Rick Hannibal, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

s.22

Regarding a rental unit at: 660 Rosehill Street, Nanaimo, BC

Date of Hearing: May 26, 2020, by conference call.

Date of Decision: May 26, 2020

Attending:

For the Landlord: Rick Hannibal, agent
Shelley Godin, agent

For the Tenant: No one attending



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for unpaid rent or utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agents, RH and SG, attended the hearing by way of conference call, the tenants did not. The landlord's agents 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 Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agents and I were the only ones who had called into this teleconference.

The landlord's agents testified that the tenants were served with the landlord's application for dispute resolution hearing package and evidence on April 9, 2020 by way of registered mail. The landlords provided Canada Post tracking numbers during the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on April 14, 2020, five days after its registered mailing.

The landlords testified that the tenants were served with the landlord's 1 Month Notice to End Tenancy for Cause on February 7, 2020, by way of posting the 1 Month Notice on their door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the landlord's 1 Month Notice on February 10, 2020, 3 days after posting.

Although the landlord applied for a monetary Order of \$1,044.544 in their initial claim, since they applied another \$1,044.54 in rent has become owing that was not included in

their application. The landlord applied to amend their claim to reflect the additional month of unpaid rent. I have accepted the landlord's request to amend their original application from \$1,044.54 to \$2,089.08 reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to monetary compensation for unpaid rent or for money owed?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2012. Monthly rent is currently set at \$1,044.54, payable on the first of the month. The landlords hold a security deposit of \$447.50 for this tenancy.

The landlord served the tenants with a 1 Month Notice for Cause on February 7, 2020, with an effective date of March 31, 2020.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
 - i) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - ii) significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord served the tenants with the 1 Month Notice as the tenants were involved in multiple incidents of harassment towards others, and which have involved the attendance of the police.

The landlord is also seeking a monetary order for unpaid rent. The landlord testified that the tenants have not paid rent for the months of April or May 2020, and believe the tenants may have moved out without notice to the landlord. The landlord is requesting an Order of Possession as the tenants have not confirmed with the landlord that they have vacated the rental unit.

Analysis

Based on undisputed testimony of the landlord, I find that the tenants were served with the Notice to End Tenancy, and I find that the 1 Month Notice complies with the form

and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, March 31, 2020.

In this case, this required the tenants and anyone on the premises to vacate the premises by March 31, 2020. As the tenants have not confirmed with the landlord that they have vacated the rental unit, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

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.*

The landlord provided undisputed evidence that the tenants failed to pay the outstanding rent for April and May 2020. Therefore, I find that the landlord is entitled to \$2,089.08 in outstanding rent for the months of April and May 2020.

The landlord continues to hold the tenants' security deposit of \$447.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants 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 issue a 1,741.58 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, plus the filing fee, and also allows the landlord to retain the tenants' security deposit:

Item	Amount
Unpaid Rent for April 2020	\$1,044.54
Unpaid Rent for May 2020	1,044.54
Less Security Deposit	-447.50
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,741.58

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: May 26, 2020



M. Lee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 910018517

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR Limited Partnership, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22 1651 Dufferin Crescent, Nanaimo, BC

Date of Decision: October 29, 2020

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on October 19, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on October 24, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on April 30, 2013, indicating a monthly rent of \$895.00, due on the first day of each month for a tenancy commencing on May 1, 2013;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 2, 2020, for \$3,775.40 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 12, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 2:00 pm on October 2, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 5, 2020, three days after its posting.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was October 10, 2020, which was a Saturday. I also find that Monday, October 12, 2020 was Thanksgiving.

The Residential Tenancy Branch is closed on Saturdays, Sundays, and holidays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Tuesday, October 13, 2020.

I further find that the landlord applied for dispute resolution on October 13, 2020, the last day that the tenant had to dispute the 10 Day Notice, and that the earliest date that the landlord could have applied for dispute resolution was October 14, 2020. The landlord made their application for dispute resolution too early.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice of October 2, 2020, is dismissed with leave to reapply.

For the same reasons identified in the 10 Day Notice, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of October 2, 2020 with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.

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: October 29, 2020



J. Doyon, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110016841

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR Limited Partnership, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: ^{s.22} 664 Rosehill Street, Nanaimo, BC

Date of Decision: November 09, 2020

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on October 19, 2020, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on October 24, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$2,968.11.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$895.00, due on the first day of each month for a tenancy commencing on September 01, 2016;
- A copy of a "Notice of Rent Increase" form provided to the tenant during the course of the tenancy, which demonstrates that the monthly rent was raised to \$989.37, effective September 01, 2019;
- A copy of a rent "Repayment Plan" dated August 25, 2020 which shows that the tenant owes rent in the amount of \$989.37 for the month of August 2020. The plan depicts that the rent owed is divided into ten installments, resulting in payments of \$98.94 due between October 01, 2020 to July 01, 2021, with the first payment due on October 01, 2020;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is a cumulative balance of unpaid rent owed by October 01, 2020 in the amount of \$2,968.11, comprised of the balance of unpaid rent owed for the months encompassing the period of August 2020 to October 2020. The landlord indicated that monthly rent in the amount of \$989.37 is owed for each of the months in the preceding period;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 02, 2020, which the landlord states was served to the tenant on October 02, 2020, for \$2,968.11 in unpaid rent due on October 01, 2020, with a stated effective vacancy date of October 12, 2020; and

- A copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on October 02, 2020. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on October 05, 2020, three days after its posting.

I find that as of September 01, 2019, the tenant was obligated to pay monthly rent in the amount of \$989.37, as the landlord has established that the monthly rent amount was increased from the initial amount as established in the tenancy agreement to \$989.37, as per the Notice of Rent Increase form.

Policy Guideline 52 "COVID-19: Repayment Plans and Related Measures" and the *COVID-19 Related Measures Act* ("C19 Act") provide guidelines with respect to rent owed for the months included in the period defined as the "specified period." Policy Guidelines 52 provides, in the part, the following:

The "specified period" is the period between March 18, 2020 and August 17, 2020 (as this date was earlier than the date on which the state of emergency expires or is cancelled). If, for example, the tenancy agreement stipulates that rent is paid on the first of each month, then the following rent payments were due within the specified period and are affected rent: April 1, 2020; May 1, 2020; June 1, 2020; July 1, 2020 ; and August 1, 2020

Policy Guidelines 52 provides, in the part, the following with respect to "affected rent":

“Affected rent” means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

The guideline goes on to state:

“A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.”

The COVID-19 (*Residential Tenancy Act and Manufactured Home Park Tenancy Act*) (No. 2) Regulation (“C19 Tenancy Regulation”), was made under sections 10.1 and 10.2 of the *Emergency Program Act* (EPA) on August 14, 2020.

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required. A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.

I find that rent owed under the tenancy with respect to the months of September 2020 and October 2020 is not captured within the “specified period” and is therefore not “affected rent.” Therefore, for those months, I find that the tenant was required to pay the full rent owed in the amount of \$989.37.

I accept the evidence before me that the tenant has failed to pay the balance of rental arrears due by October 01, 2020, in the amount of \$1,978.74, comprised of the cumulative balance of unpaid rent owed for the months of September 2020 and October 2020.

I accept the landlord’s undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

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 corrected effective date of the Notice, October 15, 2020, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,978.74 for the cumulative balance of unpaid rent owed by October 01, 2020 for the months of September 2020 and October 2020, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

With respect to the portion of the landlord's monetary claim concerning unpaid rent owed for the month of August 2020, I find as follows.

The rent owed as of August 01, 2020 falls within the specified period as is therefore affected rent which is subject to the provisions of the payment plan as outlined in Policy Guidelines 52, the C19 Act, and "C19 Tenancy Regulation."

The landlord provided a copy of a "Repayment Plan" worksheet which shows that the tenant owes rent in the amount of \$989.37 for the month of August 2020. The plan depicts that the rent owed is divided into ten installments, resulting in payments of \$98.94 due between October 01, 2020 to July 01, 2020, with the first payment due on October 01, 2020.

Therefore, the information provided in the repayment plan conflicts with the information provided on the landlord's Direct Request Worksheet, which shows that rent in the full amount of \$989.37 for the month of August 2020 was due by August 01, 2020.

With consideration given to the importance of maintaining procedural fairness, and in within the limited scope of a Direct Request proceeding, I cannot assume, within the limited purview of an ex parte proceeding, that the landlord waives the right to recover full rent owed for August 2020.

In a Direct Request proceeding where the affected rent is subject to a repayment plan, my purview in considering the unpaid rent owed for the affected period is limited to the amount shown on the repayment plan, since the provisions of Policy Guideline 52, the C19 Act, and "C19 Tenancy Regulation" apply. Therefore, I could grant the landlord only \$98.94 as a portion of rent owed for August 2020, which is the amount owed by October 01, 2020 as the first repayment installment for August 2020 rent.

If a decision is made in this proceeding regarding the issue of adjudicating rent owed for August 2020, the landlord would be prevented from reapplying for a dispute resolution hearing seeking to re-adjudicate the matter of rent owed for August 2020, as the matter would be res judicata and prevent another Arbitrator to re-hear and adjudicate the issue of rent owed for August 2020, which would already have been adjudicated.

That the landlord applied for a monetary claim which includes the full amount of rent owed for August 2020 suggests that it seeks to recover the full amount owed for that month, and in order to ensure the matter is not impacted by the principle of res judicata, I exercise my discretion to not make a finding on the matter and grant leave for the landlord to reapply to recover rent owed for August 2020, such that an Arbitrator will have leave to hear a claim concerning the entire sum of rent owed for August 2020 under the tenancy, which, within the limited scope of the Direct Request process which is subject to consideration of the repayment plan, I cannot do.

Therefore, in order to maintain procedural fairness and not hinder the landlord's ability to seek relief under the Act to recover the full amount of unpaid rent owed for the month of August 2020, I dismiss with leave to reapply, the portion of the landlord's monetary claim with respect to unpaid rent owed by August 01, 2020.

Policy Guidelines 52 provides that if the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan. The landlord may apply to the Residential Tenancy Branch for a monetary order.

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

Conclusion

Pursuant to sections 55(2)(b) and 55(4)(a) 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(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary Order in the amount of \$2,078.74 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss with leave to reapply, the portion of the landlord's monetary claim with respect to unpaid rent owed by August 01, 2020.

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: November 09, 2020

A handwritten signature in black ink, appearing to read 'J Randhawa', written over a horizontal line.

J Randhawa, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110020940

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

Devon Properties Ltd, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: Suite ^{s.22} 1651 Dufferin Crescent, Nanaimo, BC

Date of Decision: December 02, 2020

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 16, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 21, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not the applicant and was signed by the tenant on April 30, 2013, indicating a monthly rent

of \$895.00, due on the first day of each month for a tenancy commencing on May 1, 2013;

- A copy of six Notice of Rent Increase forms showing the rent being increased from \$895.00 to the monthly rent amount of \$1,066.48;
- A copy of a Repayment Plan dated August 25, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$213.24 starting on October 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 2, 2020, for \$3,775.40 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 12, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 2:00 pm on October 2, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence and I find that the landlord's name on the Application for Dispute Resolution does not match the landlord's name on the tenancy agreement, the 10 Day Notice, or any other document submitted with the Application. There is also no evidence or documentation showing that the applicant entitled to any orders that may result from this application.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

For this reason, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.

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 02, 2020



J. Doyon, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11023051

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Tenant(s),

Applicant(s)

And

NRP LIMITED PARTNERSHIP, Landlord(s),

Respondent(s)

Regarding a rental unit at: s.22 6599 APPECROSS RD, NANAIMO, BC

Date of Hearing: September 18, 2018, by conference call.

Date of Decision: September 18, 2018

Attending:

For the Landlord: Shelley Godin, Property Administrator

For the Tenant: s.22



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, MNDCT

Introduction

On July 26, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act") and seeking More Time to cancel the Notice pursuant to Section 66 of the *Act*.

On July 26, 2018, the Tenant amended her Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant and Landlord both attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package in person to the Landlord's office, but she is not sure when she did this. The Landlord confirmed that this package was received in late July 2018. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she did not serve her evidence to the Landlord. As such, her evidence could not be considered when rendering this decision. The Landlord advised that she served their evidence on September 4, 2018 by registered mail and the Tenant confirmed receipt of this. As per Rule 3.15 of the Rules of Procedure, the Landlord's evidence was accepted and considered in this hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

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 if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

At the outset of the hearing, the Tenant advised that she was no longer seeking a Monetary Order. As such, this portion of the claim was dismissed.

Issue(s) to be Decided

- Is the Tenant entitled to have the notice cancelled?
- Is the Tenant entitled to be granted more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant and Landlord agreed that the tenancy started on June 1, 2016. Rent was currently established at an amount of \$920.40 per month, due on the first day of each month. A security deposit of \$432.50 was paid.

The Landlord stated that the Notice was served to the Tenant by posting it on the Tenant's door on July 11, 2018. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or put the landlord's property at significant risk." The Notice indicated that the effective end date of the Notice was August 31, 2018.

The Tenant advised that she received the Notice on July 11, 2018; however, she stated that the reason she did not dispute the Notice on time was because^{s.22}

s.22

Analysis

With respect to the Notice served to the Tenant on July 11, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on July 11, 2018 by posting it to the Tenant's door. As per Section 90 of the *Act*, the Notice would have been deemed received after three days of being posted to the door. However, the Tenant acknowledged receiving the Notice on July 11, 2018. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that "*If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.*" I find it important to note that this information is provided on the second page of the Notice as well.

As the Tenant received the Notice on July 11, 2018, the tenth day to dispute the Notice fell on Saturday July 21, 2018. As July 21, 2018 was a weekend, the Tenant must have made this Application by July 23, 2018 at the latest. However, the undisputed evidence is that the Tenant made her Application on July 26, 2018. As the Tenant was late in making this Application, she requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice "only in exceptional circumstances." When the Tenant was questioned if there were any exceptional circumstances that prevented her from disputing the Notice within the required time frame, she stated that the reason she did not dispute the Notice on time was because^{s.22}

s.22

s.22

She also did not provide a reason why she could not have had someone else make the Application for her if she was unable to.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's testimony and reasons would constitute exceptional circumstances. While the Tenant has provided a reason for not disputing the Notice on time that may satisfactorily be considered exceptional, this happened on the second to last day that she could make her Application. Furthermore, the Tenant has not provided a reason for

not disputing the Notice before^{s.22} As such, I find that there was insufficient evidence that the Tenant had significant issues or exceptional circumstances that prevented her from disputing the Notice on time. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Tenant has paid rent for September 2018 and as the Landlord allowed more time for the Tenant to vacate the rental unit, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on October 31, 2018**. As a note, the Tenant must still pay October 2018 rent in full.

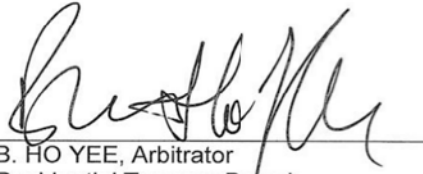
Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on October 31, 2018** 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.

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: September 18, 2018



B. HO YEE, Arbitrator
Residential Tenancy Branch



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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No:11023051,

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Tenant(s),
Applicant(s)/Applicant(s) on Review Application

And

NRP LIMITED PARTNERSHIP, Landlord(s),
Respondent(s)/Respondent(s) on Review Application

Regarding a rental unit at: ^{s.22} 6599 APPECROSS RD, NANAIMO, BC

Date of Review Consideration Decision: October 11, 2018

Date of Original Decision: September 18, 2018



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes CNC, MT, MNDCT

Basis for Review Consideration

On October 9, 2018 the Tenant applied for a review consideration of a decision issued on September 18, 2018.

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within:

- 2 days after a copy of the decision or order is received by the party, if the decision or order relates to an early end of tenancy; an order of possession for a landlord or tenant; unreasonable withholding of consent by a landlord regarding assignment or subletting; or a landlord's notice to end tenancy for non-payment of rent;
- 5 days after a copy of the decision or order is received by the party, if the decision or order relates to a notice to end tenancy for any other reason; repairs or maintenance; or services or facilities; or
- 15 days after a copy of the decision or order is received by the party, if the decision relates to any other part of the *Act*.

From the decision of September 18, 2018, the issues before the original arbitrator were related to cancellation of a 1 Month Notice to End Tenancy for Cause; and, the tenant's request for more time to dispute the 1 Month Notice. As such, I find the original decision allowed the applicant for review 2 days to file her Application for Review Consideration.

The Tenant indicates that she received the decision on September 21, 2018. Two days after September 21, 2018 falls on a weekend meaning her time limit for filing is extended to the next business day which was September 24, 2018. In filing this Application for Review on October 9, 2018 the tenant is well past her deadline for filing.

The Tenant requested an extension of time to make this application.

In response to the request to “State why you were not able to apply for review within the required time limit and LIST and ATTACH evidence, such as a copy of your hospital admission form,” the Tenant submitted:

s.22

On the last page of the Application for Review Consideration, the Tenant writes:

s.22

It is unclear whether the statement above pertains to the late filing of the tenant’s Application for Dispute Resolution or the tenant’s Application for Review Consideration since both Applications were filed late. Out of an abundance of caution, I have considered the statement in determining whether an extension is warranted to file the Application for Review.

The tenant provided | s.22

s.22

Findings on Extension of Time to File the Review Consideration Application

Section 66 of the Act provides that an arbitrator may extend or modify a time limit established by these Acts only in **exceptional circumstances**.

Residential Tenancy Policy Guideline 36 provides information to determine what qualifies as exceptional circumstances:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- *the party who applied late for arbitration was not feeling well*
- *the party did not know the applicable law or procedure*
- *the party was not paying attention to the correct procedure*
- *the party changed his or her mind about filing an application for arbitration*
- *the party relied on incorrect information from a friend or relative*

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- *the party did not willfully fail to comply with the relevant time limit*
- *the party had a bona fide intent to comply with the relevant time limit*
- *reasonable and appropriate steps were taken to comply with the relevant time limit*
- *the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party*
- *the party has filed an application which indicates there is merit to the claim*
- *the party has brought the application as soon as practical under the circumstances*

I find the Tenant's ^{s.22}
s.22

I also find that the tenant's written submissions concerning her lateness in filing are unclear, unsubstantiated and do not satisfy me that an exceptional circumstance prevented her from filing this Application for Review within the time limit for doing so.

Section 81(1) of the *Act* establishes that an Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied; or
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

In light of the above, I find the tenant filed this Application for Review outside of the time limit for doing so; did not present sufficient evidence to warrant an extension of time to make the Application for Review; and, I dismiss the tenant's Application for Review pursuant to section 81 of the *Act*.

Conclusion

I have dismissed the tenant's Application for Review Consideration. The decision and Order of Possession issued on September 18, 2018 stand.

This review consideration 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: October 11, 2018



C. Reid, Arbitrator
Residential Tenancy Branch



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11010578

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: 823 BRECHIN ROAD , NANAIMO, BC

Date of Decision: February 28, 2018

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 21, 2018, the landlord’s agent “SG” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service. The Proof of Service forms establish that the service was witnessed by “AW” and a signature for “AW” is included on the forms.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on February 26, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant^{s.22} on October 05, 2017, indicating a monthly rent of \$1,131.00 due on the first day of the month for a tenancy commencing on November 01, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,284.00 for outstanding rent, comprised of the balance of unpaid rent owed for the months of January 2018 and February 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 05, 2018, which the landlord states was served to the tenants on February 05, 2018, for \$1,284.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 15, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "BS" served the Notice to the tenants by way of posting it to the door of the rental unit on February 05, 2018. The Proof of Service form establishes that the service was witnessed by ^{s.22} " " and a signature for ^{s.22} is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the

tenants are deemed to have received the Notice on February 08, 2018, three days after its posting.

Although a second individual, identified as ^{s.22}, is listed as a respondent tenant on the Application for Dispute Resolution by Direct Request and as a second tenant on the tenancy agreement, a signature for ^{s.22} does not appear on the tenancy agreement to demonstrate that ^{s.22} entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord's application against the tenant ^{s.22} only.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,131.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,284.00, comprised of the balance of unpaid rent owed for the months of January 2018 and February 2018;

I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, February 18, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,284.00 for unpaid rent owed for the months of January 2018 and February 2018, as of February 16, 2018, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,384.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 28, 2018

A handwritten signature in black ink, appearing to read 'J Randhawa', written over a horizontal line.

J Randhawa, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11038281

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: 801 BRECHIN ROAD, NANAIMO, BC

Date of Decision: March 04, 2019

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on February 25, 2019, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on March 2, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on July 10, 2017, indicating a monthly rent of \$1,306.62, due on the first day of each month for a tenancy commencing on October 1, 2017;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,306.62 to the current monthly rent amount of \$1,358.88;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 4, 2019, for \$1,358.88 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of February 14, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 2:00 pm on February 4, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on February 7, 2019, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,358.88, as per the tenancy agreement and the Notice of Rent Increase.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 17, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,358.88, the amount claimed by the landlord, for unpaid rent owing for February 2019 as of February 20, 2019.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,458.88 for rent owed for February 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: March 04, 2019



J. Doyon, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11022214

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22
s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22 .847 HOWARD AVENUE, NANAIMO, BC

Date of Decision: July 30, 2018

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

The landlord submitted two copies of a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 23, 2018, the landlord sent Tenant ^{s.22} the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant ^{s.22} is deemed to have been served with the Direct Request Proceeding documents on July 28, 2018, the fifth day after their registered mailing.

The landlord submitted a copy of a Canada Post Customer Receipt containing a Tracking Number to confirm a package was sent to Tenant ^{s.22} on July 23, 2018. However, the landlord has not submitted a Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding to Tenant ^{s.22}. Without this accompanying statement, I find that I am not able to confirm which documents were included in the registered mailing to Tenant ^{s.22} on July 23, 2018.

As I am not able to confirm service of the Notice of Direct Request Proceeding documents to Tenant^{s.22} in accordance with section 89 of the *Act*, I will only proceed with the portion of the landlord's application naming Tenant^{s.22} as a respondent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant^{s.22} on September 30, 2015, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on October 1, 2015;
- Two copies of Notice of Rent Increase forms showing the rent being increased from \$1,000.00 to the current monthly rent amount of \$1,067.07;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 4, 2018, for \$1,234.14 in unpaid rent. The 10 Day Notice provides that Tenant^{s.22} had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of July 14, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to Tenant^{s.22} door at 3:00 pm on July 4, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant^{s.22} was deemed served with the 10 Day Notice on July 7, 2018, three days after its posting.

I find that Tenant^{s.22} was obligated to pay the monthly rent in the amount of \$1,067.07, as per the tenancy agreement and the Notices of Rent Increase.

I accept the evidence before me that Tenant^{s.22} has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that Tenant^{s.22} is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, July 17, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,234.14, the amount claimed by the landlord, for unpaid rent owing for June 2018 and July 2018 as of July 17, 2018.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant^{s.22}. Should Tenant^{s.22} **and any other occupant** fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,334.14 for rent owed for June 2018 and July 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant^{s.22} must be served with **this Order** as soon as possible. Should Tenant^{s.22} 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.

I dismiss the monetary portion of the landlord's application naming Tenant ^{s.22} as a respondent without leave to reapply.

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 30, 2018



J. Doyon, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11003522

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: ^{s.22} 309 MILLSTONE AVENUE, NANAIMO, BC

Date of Hearing: June 20, 2018, by conference call.

Date of Decision: July 3, 2018

Attending:

For the Landlord: Shelley Godin – agent for landlord

For the Tenants: Absent

Registered mail tracking numbers referred to in this decision: ^{s.22} RN 273 091 250 CA
^{s.22} RN 052 433 483 CA



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRLS, MNDCLS, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for a monetary order for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, for unpaid rent or utilities, to retain the tenant's security deposit and to recover the cost of the filing fee.

An agent for the landlord ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing") application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants by registered mail on November 17, 2017 and that the mail was addressed to the tenants. The registered mail tracking numbers have been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website the registered mail packages were both signed for and accepted by the tenants with the package for tenant ^{s.22} being signed for and accepted on December 4, 2017, and the package for tenant ^{s.22} being signed for and accepted on November 24, 2017. I find the tenants were served as indicated above based on the testimony of the agent and the online registered mail tracking information including the tracking numbers. Therefore, the hearing continued without the tenants present and as such, I consider this application to be unopposed by the tenants.

Preliminary and Procedural Matter

The landlord confirmed their email address at the outset of the hearing. Accordingly, the decision will be emailed to the landlord and sent by regular mail to the tenants who did not attend the hearing to provide their email address.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2017 and was not scheduled to end until January 31, 2018. The agent stated that the tenants vacated the rental unit on October 31, 2017. Monthly rent of \$755.00 plus \$10.00 parking per month was due on the first day of each month. The tenants paid a security deposit of \$377.50 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming a total of \$1,132.50 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Liquidated damages	\$377.50
2. Loss of November 2017 rent	\$755.00
TOTAL	\$1,132.50

Regarding item 1, the agent referred to clause 5 of the tenancy agreement submitted in evidence which indicates that the parties initialed the liquidated damages amount of \$377.50 that was agreed to between the parties should the tenants end the fixed term tenancy early as a pre-determined cost to re-rent the rental unit.

Regarding item 2, the landlord has claimed \$755.00 for the loss of November 2017 rent due to the tenant vacating the rental unit on October 31, 2017. The agent stated that new tenants were found who began paying rent as of December 1, 2017 resulting in

only one month of rental loss of \$755.00 for the landlord. The landlord is also claiming the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable. I also find that the tenants breached section 45(2) of the *Act* which applies and states:

Tenant's Notice

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[My emphasis added]

In the matter before me, the tenants breached section 45(2) of the *Act* by vacating before the tenancy was scheduled to expire. Therefore, I find the landlord has met the burden of proof in proving their entire claim of **\$1,132.50** as claimed.

As the landlord's claim was successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was fully successful. Based on the above, I find the landlord has established a total monetary claim of **\$1,232.50** comprised of \$1,132.50 as claimed plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenants' \$377.50 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$377.50 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$855.00**.

I caution the tenants to comply with section 45 of the *Act* in the future.

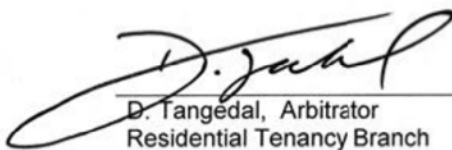
Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenants' full security deposit of \$377.50 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$855.00. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 3, 2018


D. Tangedal, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11006024

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: ^{s.22} 665 ROSEHILL STREET , NANAIMO, BC

Date of Decision: December 21, 2017

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that December 15, 2017, the landlord’s agent “SG” served the tenant with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on December 20, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on August 16, 2017, indicating a monthly rent of \$755.00, due on the first day of the month for a tenancy commencing on August 29, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$755.00 for outstanding rent, comprised of the balance of unpaid rent due by December 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 04, 2017, which the landlord states was served to the tenant on December 04, 2017, for \$755.00 in unpaid rent due on December 01, 2017, with a stated effective vacancy date of December 14, 2017; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "RH" served the Notice to the tenant by way of posting it to the door of the rental unit on December 04, 2017. The Proof of Service form establishes that the service was witnessed by s.22 and a signature for 's.22 is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on December 07, 2017, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$755.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$755.00, comprised of the balance of unpaid rent owed by December 01, 2017 for the month of December 2017.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

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 corrected effective date of the Notice, December 17, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$755.00 for unpaid rent owing for December 2017, as of December 14, 2017, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$855.00 for rent owed for December 2017, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 21, 2017

A handwritten signature in black ink, appearing to read 'J Randhawa', written over a horizontal line.

J Randhawa, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11016745

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Tenant(s),

Applicant(s)

And

NPR LIMITED PARTNERSHIP, Landlord(s),

Respondent(s)

Regarding a rental unit at: s.22 660 ROSEHILL ST., NANAIMO, BC

Date of Hearing: July 04, 2018, by conference call.

Date of Decision: July 04, 2018

Attending:

For the Landlord: Ms. S. Godin

For the Tenant: No one



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause, dated and received April 1, 2018.

The applicant tenant did not attend the hearing within ten minutes after its scheduled start time at 9:00 o'clock a.m. on July 4, 2018. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the respondent's representative and this arbitrator were the only ones who had called into this teleconference during that period.

As a result, the application is dismissed. The landlord's representative Ms. G. attended and was ready to proceed. As a result, the application is dismissed without leave to re-apply. In accordance with s. 55 of the *Residential Tenancy Act*, the landlord will be granted an order of possession.

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 04, 2018

G. Molnar, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11019098

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord,

Applicant

And

s.22

Tenant,

Respondent

Regarding a rental unit at: s.22 -631 ROSEHILL STREET, NANAIMO, BC

Date of Hearing: November 13, 2018, by conference call.

Date of Decision: November 14, 2018

Attending:

For the Landlord: Shelley Godin- property manager

For the Tenant: No person attending

Canada Post Tracking Number Provided: RN 273090909 CA



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The property manager (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.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on June 13, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on June 18, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlord testified that this tenancy began on May 1, 2017 and ended on May 31, 2018. Monthly rent in the amount of \$785.20 was payable on the first day of each month. A security deposit of \$377.50 and a pet damage deposit of \$377.50 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. A joint move in inspection and inspection report was signed by the tenant and a representative of the landlord on April 28, 2017. The move in condition inspection report was entered into evidence.

The landlord testified to the following facts. On May 1, 2018 the tenant provided notice to end tenancy for May 31, 2018 and the tenant's forwarding address was provided on that notice. On May 7, 2018 the landlord sent the tenant a letter requesting the tenant attend at the subject rental property at 12:00 p.m. on May 31, 2018 to complete the move out condition inspection and inspection report. The tenant did not respond to this letter. The tenant did not attend at the subject rental property on May 31, 2018 to complete the move out condition inspection report. The move out condition inspection report was completed by the landlord on May 31, 2018. The move out condition inspection report was entered into evidence.

The landlord filed for dispute resolution on June 8, 2018. The landlord is seeking compensation for the following:

Item	Amount
May 2018 rent	\$785.20
Late fee for May 2018 rent	\$25.00
Parking fee for April 2018	\$10.00
Parking fee for May 2018	\$10.00
Cleaning- 4 hrs at \$25.00 per hour	\$100.00
Garbage removal	\$100.00
Materials to repair wall	\$45.25
Labour to repair wall	\$35.00
Key replacement	\$25.00
Administrative fee for attending hearing	\$25.00
GST	\$16.25
Filing fee	\$100.00
Total	\$1,276.70

The landlord provided undisputed testimony that the tenant did not pay any rent for May 2018. A move out statement stating same was entered into evidence. The tenancy agreement states at section 10 "Late payment...are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord".

The landlord testified that the tenant signed a parking agreement which states that the tenant will pay \$10.00 per month for parking and that the parking agreement expires or renews in conjunction with the tenancy agreement. The landlord testified that the tenant did not pay for parking in April or May 2018. The parking agreement was entered into evidence.

The landlord testified that the house was left dirty and entered photographs showing same into evidence. The move in and move out condition inspection reports state that the subject rental property was clean when the tenant moved in and that most of the subject rental property was dirty when the tenant moved out. The landlord testified that in-house cleaning staff spent four hours cleaning the subject rental property at a rate of \$25.00 per hour for a total of \$100.00.

The landlord testified that tenant left garbage and old furniture in the subject rental property which had to be hauled to the dump. The landlord testified that the dump charged the landlord \$100.00 to dispose of the garbage. The landlord did not enter the

receipt for the garbage dump into evidence. Photographs of the garbage left in the subject rental property were entered into evidence.

The landlord testified that the tenant damaged the walls in the subject rental property and entered into evidence photographs of damaged walls. The move in condition inspection report states that the walls were in satisfactory condition when the tenant move in. The move out condition inspection report states that the walls were dirty when the tenant moved out and that the bedroom walls were damaged. The landlord testified that an in-house maintenance person spent one hour repairing the walls at a rate of \$35.00 per hour. The landlord testified that the maintenance person used \$45.25 worth of materials from the landlord's stock room to complete the repairs. The landlord was unable to provide details as to how the material cost was calculated.

The landlord testified that the tenant did not return his keys when he vacated the subject rental property. The landlord testified that their in-house cost for the labour to re-key the subject rental property and the new keys themselves was \$25.00. The landlord was unable to provide a breakdown of the cost.

The landlord testified that she is seeking to recover a \$25.00 administrative fee for the paperwork associated with this hearing.

The landlord testified that GST was charged on the in-house repairs made to the subject rental property in the amount of \$16.25 and that she is seeking reimbursement of this amount. No calculation or breakdown of how the \$16.25 was entered into evidence.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rent

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 this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$785.20 on May 1, 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$785.20 in unpaid rent.

Late Fee

Section 7 (1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge a non-refundable administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

I find that pursuant to section 7 of the *Regulation* and section 10 of the tenancy agreement, the landlord is entitled to charge a non-refundable administration fee for late payment of rent in the amount of \$25.00. I find that the tenant owes the landlord \$25.00 for late payment of rent for the month of May 2018.

Parking Fees

The tenant signed a parking agreement which states that the tenant is obligated to pay \$10.00 per month for parking in conjunction with the tenancy agreement. I find that the tenancy agreement concluded on May 31, 2018. I find that the tenant was obligated to pay the monthly parking fee in the amount of \$10.00 per month until the end of the tenancy which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$20.00 in unpaid parking fees for the months of April and May 2018.

Cleaning Fee

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the landlord's testimony and the condition inspection reports, I find that the rental unit required significant cleaning. I find that the cleaning charges provided by the landlord in the amount of \$100.00 are reasonable and that the tenant is responsible for this charge because he failed to clean the subject rental property in accordance with section 37 of the *Act*.

Garbage Fee

The landlord testified that the receipt for the materials taken to the dump was not uploaded into evidence. I find that the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for garbage removal fails.

Repair to Wall

I find that since the landlord was unable to provide details as to how the material cost for the wall repair was calculated, the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for the materials for the wall repair fails.

I accept the landlord's testimony that an in-house maintenance person spent one hour repairing the wall and that he was billed out at \$35.00 per hour. I find that the landlord is entitled to recover the \$35.00 labour charge from the tenant.

Key Replacement

I find that since the landlord was unable to provide details as to how the re-keying costs were calculated, the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for the re-keying fails.

Administrative Fee

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the landlord's claim for an administrative fee associated with attending and or preparing for this hearing.

GST

I find that since the landlord was unable to provide details as to how the GST claim material was calculated, the landlord has failed to prove the amount of or value of the damage or loss and so her claim for damages for GST fails.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit and pet damage deposit in the amount of \$755.00 in part satisfaction of the monetary claim against the tenant.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
May 2018 rent	\$785.20
Late fee for May 2018 rent	\$25.00

Parking fee for April 2018	\$10.00
Parking fee for May 2018	\$10.00
Cleaning- 4 hrs at \$25.00 per hour	\$100.00
Labour to repair wall	\$35.00
Filing fee	\$100.00
Less security deposit	-\$377.50
Less pet damage deposit	-\$377.50
Total	\$310.20

The landlord is provided with this Order in the above terms and 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: November 14, 2018


 L. Mooney, Arbitrator
 Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11038004

Additional File(s): 11037591, 11037788

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),
Applicant(s)/Respondent(s)

And

s.22

Tenant(s),
Applicant(s)/Respondent(s)

Regarding a rental unit at: s.22 669 ROSEHILL STREET, NANAIMO, BC

Date of Hearing: March 25, 2019, by conference call.

Date of Decision: March 25, 2019

Attending:

For the Landlord: Ann Wheatley, agent

For the Tenant: No one, although duly served



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's applications are seeking an order as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent.

Preliminary and procedural matter

Only the landlord's agent appeared.

Landlord's application

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served by registered mail sent on February 21, 2019. Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served, five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent stated that the tenant vacated the premises on February 28, 2019, and they do not need an order of possession.

Tenant's applications

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 11:10 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's applications without leave to reapply.

Issue to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The tenancy began on December 1, 2018. Rent in the amount of \$795.00 was payable on the first of each month. A security deposit of \$397.50 was paid by the tenant. The tenancy ended on February 28, 2019.

The landlord's agent testified that the tenant did not pay rent for February 2019. The landlord seeks to recover unpaid rent (\$795.00), late fee (\$25.00), and insufficient fund fee (\$25.00). The landlord seeks to recover the total amount of \$945.00. Filed in evidence is a copy of the rent ledger.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I accept the undisputed evidence of the landlord's agent that the tenant failed to pay rent for February 2019. I further find the landlord is entitled to recover the late fee, and insufficient fund fee. Therefore, I find the landlord is entitled to recover the amount of **\$845.00**.

I find that the landlord has established a total monetary claim of **\$945.00** comprised of the above amount and the \$100.00 fee paid by the landlord for this application.

I further find it appropriate to offset the above amount with the security deposit of **\$397.50**. I order that the landlord retain the security deposit in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$547.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's applications are dismissed.

The landlord is granted a monetary order, and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: March 25, 2019



A. Wood, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)



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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11003582

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Tenant(s),

Applicant(s)

And

NPR GP INC., Landlord(s),

Respondent(s)

Regarding a rental unit at: ^{s.22} 665 ROSEHILL STREET , NANAIMO, BC

Date of Hearing: January 26, 2018, by conference call.

Date of Decision: January 26, 2018

Attending:

For the Landlord: NONE

For the Tenant: NONE



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was scheduled to begin at 9:00 a.m. on January 26, 2018, by conference call. Despite waiting ten minutes, after the scheduled start time, neither party called in to participate in the hearing.

Accordingly, in the absence of any evidence or submissions I dismiss this application with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 26, 2018



S. Kaila, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11008573

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

, Tenant(s),

Respondent(s)

Regarding a rental unit at: ^{s.22} 222 ROSEHILL STREET, NANAIMO, BC

Date of Hearing: February 22, 2018, by conference call.

Date of Decision: February 22, 2018

Attending:

For the Landlord: Lynn Goertzen, agent
Shelley Godin, agent

For the Tenant: No one, although duly served



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order to end tenancy early and obtain an order of possession.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on January 26, 2018, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

At the outset of the hearing the landlord's agent stated that they were told by the tenant's legal counsel that the tenant would not be returning; however, they want to obtain an order of possession to ensure the tenant does not return.

Issue to be Decided

Is the landlord entitled to end tenancy early and obtain an order of possession?

Background and Evidence

The tenancy began on May 1, 2011. Rent in the amount of \$792.07 was payable on the first of each month. A security deposit of \$345.00 was paid.

The landlord's agent testified that they seek to end the tenancy early and obtain an order of possession due to an incident that occurred on January 21, 2018.

The landlord's agent testified that on January 21, 2018, they were informed that the
s.22

The agent stated that the tenant s.22
s.22

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month notice to end tenancy if there is evidence that the tenant has breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month notice to end tenancy.

In this case, the tenant s.22
s.22

I find this is an s.22

I have also considered whether it would be unreasonable or unfair to the landlord to wait for a one month notice to end tenancy to take effect. In this case, the ls.22
s.22

I find it would be unfair to the other occupant to wait for a one month notice to end tenancy to take effect. I grant the landlord's application to end this tenancy early.

Therefore, I grant the landlord an order of possession effective **two (2) days** after it is served upon the tenant. This order may be filed with the Supreme Court of British Columbia and enforced as an order of that court.

As the landlord has been successful with their application, I find the landlord is entitled to recover the cost of filing fee from the tenant in the amount of \$100.00. I authorize the landlord to deduct the amount of \$100.00 from the tenant's security deposit in full satisfaction of this award.


Conclusion

The landlord's application to end this tenancy early pursuant to section 56 of the *Act* is granted.

The landlord is granted an order of possession and can keep the amount of \$100.00 from the tenant's security deposit to recover the cost of the filing fee.

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: February 22, 2018

A handwritten signature in black ink, appearing to read 'A. Wood.', is positioned above a horizontal line.

A. Wood, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11063704

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR GP INC (part. for NPR Limited Partnership), Landlord(s),
Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22 - 645 Townsite Road, Nanaimo, BC

Date of Decision: February 03, 2020

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on January 29, 2020 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on February 03, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$907.72.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$814.00, due on the first day of each month for a tenancy commencing on May 01, 2017;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$907.72, comprised of the balance of unpaid rent due by January 01, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 06, 2020, which the landlord states was served to the tenant on January 06, 2020, for \$907.72 in unpaid rent due on January 01, 2020, with a stated effective vacancy date of January 16, 2020; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on January 06, 2020. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on January 09, 2020, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$814.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay a cumulative balance of rental arrears in the amount of \$907.72, comprised of the balance of unpaid rent owed by January 01, 2020.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

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 corrected effective date of the Notice, January 19, 2020, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$907.72 for unpaid rent owed by January 01, 2020, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,007.72 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 03, 2020



J Randhawa, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11014049

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: 117-149 Wakesiah Avenue, Nanaimo, BC

Date of Hearing: August 09, 2018, by conference call.

Date of Decision: August 09, 2018

Attending:

For the Landlord: Ms. S. Godin and Mr. R. Hannibal

For the Tenant: No one

Canada Post Mail Tracking: RN273091175CA and RN273091161CA



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The landlord applies to recover \$555.00 as liquidated damages imposed under the tenancy agreement in the event a tenant ends the tenancy before the expiry of its fixed term.

Neither of the respondent tenants attended the hearing within ten minutes after its scheduled start time at 1:30 p.m. on August 9, 2018. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the landlord's representatives and this arbitrator were the only ones who had called into this teleconference during that period.

Ms. G. for the landlord shows that both tenants were served with the Notice of Dispute Resolution Proceeding by registered mail sent to the forwarding address provided by the tenants. Canada Post records (tracking numbers shown on cover page of this decision) show that both tenants received and signed for their mail on April 18, 2018.

On this evidence I find that the tenants have each been duly served.

On the undisputed evidence of the landlord I find that the tenants ended the tenancy March 31, 2018 and before the May 31, 2018 end of its fixed term. As a result, in accordance with the written tenancy agreement, they are subject to pay the \$555.00 amount stated in the tenancy agreement as liquidated damages in the event of such an occurrence.

The landlord is entitled to a monetary award of \$555.00 against the tenants, plus recovery of the \$100.00 filing fee for this application. I authorize the landlord to retain the \$555.00 security deposit in reduction of the amount awarded.

The landlord will have a monetary order against the tenants, jointly and severally, for the remainder of \$100.00.

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: August 09, 2018



G. Molnar, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11038932

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Applicant(s),

Applicant(s)

And

RICK HANNIBAL, Respondent(s),

Respondent(s)

Regarding a rental unit at: s.22 149 WAKESIAH AVENUE, NANAIMO, BC

Date of Hearing: April 09, 2019, by conference call.

Date of Decision: April 10, 2019

Attending:

For the Respondent: Rick Hannibal, manager of NPR Limited Partnership
Shelly Godin, manager of NPR Limited Partnership

For the Applicant: s.22 applicant
s.22 assistant

Note:

Tenant: John Howard Society
Landlord: NPR Limited Partnership



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and MT

Introduction

This hearing dealt with the occupant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 66; and
- cancellation of the landlord's One Month Notice pursuant to section 47.

Applicant,^{s.22} . appeared with assistant,^{s.22} . R.H. and S.G. appeared on behalf of the respondent.

The One Month Notice was executed and served on February 07, 2019 by the apartment building management company (the "landlord"), stated on the cover page of this decision. The One Month Notice was addressed to the tenant non-profit society (the "tenant") stated on the cover page of this decision. The landlord testified that ^{s.22} is not a tenant in the tenancy agreement but is an occupant. The landlord testified that the tenancy agreement is between apartment building management company and the non-profit society.

^{s.22}

^{s.22} There was no appearance by the tenant at the hearing and the respondent testified that the tenant has not filed an application to cancel the One Month Notice.

Section 47(c) of the *Act* states that a tenant may make an application to cancel a one month notice to end tenancy. However, ^{s.22} is an occupant of the rental unit and not a

tenant. As such,^{s.22} does not have any standing to make an application to cancel the One Month Notice. Section 62(4)(b) of the Act states that an application that does not disclose a dispute that may be determined the Act may be dismissed. Accordingly, the occupant's application to cancel the One Month Notice is dismissed without leave to reapply. As there is no pending application for an order for possession, the tenancy between the rightful tenant and the landlord shall continue until it ends pursuant to the Act.

Conclusion

The application to cancel the One Month Notice is dismissed without leave to reapply.

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 10, 2019


R. McANDREW, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11042709

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord,

Applicant

And

JOHN HOWARD SOCIETY, Tenant,

Respondent

Regarding a rental unit at: ^{s.22} 149 WAKESIAH AVENUE, NANAIMO, BC

Date of Hearing: June 4, 2019, by conference call.

Date of Decision: June 4, 2019

Attending:

For the Landlord: Shelley Godin, Agent
Rick Hannibal, Agent

For the Tenant: Anne Marie Tosh, Agent
Andrew Fergusson, Agent



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

This hearing dealt with the Landlord's Application for Dispute Resolution, made on April 17, 2019 (the "Application"). The Landlord applied an order of possession based on an undisputed One Month Notice to End Tenancy for Cause, dated February 7, 2019 (the "One Month Notice"), and to recover the filing fee, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord was represented at the hearing by S.G. and R.H., agents. The Tenant was represented at the hearing by A.T. and A.F., agents. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, S.G. testified the Application package was served on the Tenant by registered mail on April 25, 2019. A.T. acknowledged receipt on behalf of the Tenant. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

All in attendance were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing, A.T. and A.F. acknowledged receipt of the One Month Notice on or about February 7, 2019, and confirmed that it was not disputed in accordance with section 47 of the *Act*. Further, A.T. and A.F. stated they do not oppose an order of possession being granted to the Landlord. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In addition, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be retained from the security deposit held.

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: June 4, 2019



C. Wilson Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11018771

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR Limited Partnership, Landlord,

Applicant

And

s.22

Tenants,

Respondents

Regarding a rental unit at: ^{s.22} 153 WAKESIAH AVENUE, NANAIMO, BC

Date of Hearing: August 24, 2018, by conference call.

Date of Decision: August 24, 2018

Attending:

For the Landlord: Ann Wheatley, agent

For the Tenants: No attendance



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This decision pertains to the landlord's application for dispute resolution filed on June 5, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord seeks a monetary order for liquidated damages, cleaning costs, an administrative fee and GST, and a monetary order to recover the filing fee, pursuant to sections 67 and 72(1) of the Act. The landlord also applies to retain the tenants' security deposit, if successful.

The landlord's agent attended the hearing before me, was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants did not attend.

The agent testified that she served the Notice of Dispute Resolution proceeding package by Canada Post registered mail on June 12, 2018, and that it was picked up by one of the tenants on June 13, 2018. I find that the landlord served the tenants pursuant to section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Is the landlord entitled to a monetary order for liquidated damages, cleaning costs, an administrative fee, and for GST?
2. Is the landlord entitled to a monetary order for recovery of the filing fee?
3. If the landlord is successful on either, or both, of the above-noted claims, may it retain the tenants' security deposit in partial satisfaction of any award?

Background and Evidence

The agent testified that the tenants entered into a fixed term tenancy on November 1, 2017, with the end of the tenancy to be October 31, 2018. Monthly rent was \$1,120.00, due on the first of the month. In addition, there were parking fees of \$10.00 and other fees of \$25, per month. The tenants paid a security deposit of \$400.00. The tenants also paid a pet damage deposit, which was refunded, according to the written tenancy agreement (submitted into evidence by the landlord).

The tenancy agreement included a liquidated damages clause that states:

If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$560.00 as liquidated damages [. . .]

The clause, and the tenancy agreement, was initialed and signed by the tenants.

The tenants gave verbal notice that they were ending their tenancy, and gave that notice on April 27, 2018. They then provided written notice on May 4, 2018. A copy of the tenants' written notice to end tenancy was submitted into evidence.

The landlord completed a condition inspection report at the start of the tenancy and at the end of the tenancy, and submitted into evidence a copy of the report.

The landlord claims, in their Monetary Order Worksheet, liquidated damages in the amount of \$552.50, cleaning costs in the amount of \$25.00, an "admin fee" of \$25.00, and GST in the amount of \$2.50, for a total claim of \$605.00. They also claim \$100.00 for the filing fee.

Analysis

Section 67 of the Act empowers me to determine the amount of, and order that a party pay, compensation to another party, if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement.

The tenants breached the tenancy agreement by ending the tenancy before the end of the fixed term, and as such are liable for the liquidated damages claimed by the landlord. The other amounts claimed by the landlord, the cleaning fee, the admin fee, and the GST, are also result from the tenants' breaching of the tenancy agreement. The landlord testified, and submitted documentary evidence (primarily by way of the tenancy agreement and a monetary worksheet) to support their claim, that the amount of the loss resulting from the breach is in the amount of \$605.00.

Taking into consideration all the evidence, and the unchallenged testimony of the landlord's agent presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$605.00. I thus grant the landlord a monetary award in the amount of \$605.00.


Having completed a condition inspection report at the start, and at the end, of the tenancy pursuant to sections 23, 24, 35, 36 and 38 of the Act, I find that the landlord may retain the \$400.00 security deposit in partial satisfaction of the award, pursuant to section 38(4)(b) of the Act. Further, I grant the landlord a monetary award in the amount of \$100.00 for recovery of the filing fee. Therefore, I grant a monetary order in the amount of \$305.00 ($\$605.00 + \$100.00 - \$400.00 = \305.00).

Conclusion

I hereby grant the landlord a monetary order in the amount of \$305.00, which must be served on the tenants. The order may be filed in the Provincial Court of British Columbia and enforced as a judgment or 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 Act.

Dated: August 24, 2018



A. Denegar, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11035588

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: ^{s.22} 155 WAKESIAH AVENUE, NANAIMO, BC

Date of Decision: January 21, 2019

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 15, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on January 20, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on February 15, 2017, indicating a monthly rent of \$1,110.00, due on the first day of each month for a tenancy commencing on March 1, 2017;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,110.00 to the current monthly rent amount of \$1,154.40;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 4, 2019, for \$1,278.20 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of January 14, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 1:00 pm on January 4, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$600.00 of the \$1,278.20 identified as owing in the 10 Day Notice was paid on January 14, 2019.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 7, 2019, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,154.40, as per the tenancy agreement and the Notice of Rent Increase.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, January 17, 2019.

I find that the tenant has paid \$600.00 towards the \$1,278.20 being claimed by the landlord. Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$678.20, the amount established by the landlord, for unpaid rent owing for December 2018 and January 2019 as of January 15, 2019.

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

Conclusion

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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$778.20 for rent owed for December 2018 and January 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and 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.

I dismiss the balance of the landlord's application for unpaid rent owing for December 2018 and January 2019 without leave to reapply

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: January 21, 2019



J. Doyon, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11057839

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR GP INC., GENERAL PARTNER FOR NPR LIMITED PAR,
Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: SUITE ^{s.22} 155 WAKESIAH AVENUE, NANAIMO, BC

Date of Decision: November 14, 2019

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 8, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 13, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on May 30, 2018, indicating a monthly rent of \$1,107.60, due on the first day of each month for a tenancy commencing on June 1, 2018;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,107.60 to the current monthly rent amount of \$1,135.29;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 2, 2019, for \$1,014.06 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 1:20 pm on October 2, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$714.00 of the \$1,014.06 identified as owing in the 10 Day Notice was paid on October 29, 2019.

Analysis

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$1,135.29, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 5, 2019, three days after its posting.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 15, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$300.06, the amount claimed by the landlord for unpaid rent owing for October 2019, as of the date of this application, November 5, 2019.

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

Conclusion

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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$400.06 for rent owed for October 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and 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: November 14, 2019



J. Doyon, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 11022435

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

NPR LIMITED PARTNERSHIP, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22 155 WAKESIAH AVENUE , NANAIMO, BC

Date of Decision: July 31, 2018

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on July 23, 2018, the landlord's agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on July 28, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$1,107.60, due on the first day of each month for a tenancy commencing on June 01, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,790.61 for outstanding rent due by July 01, 2018, comprised of the balance of unpaid rent owed for June 2018 and July 2018;
- A copy of a receipt, dated June 29, 2018, which demonstrates that the tenant provided a partial payment of rent in the amount of \$424.59 toward rent owed for the month of June 2018, which was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 04, 2018, which the landlord states was served to the tenant on July 04, 2018, for \$1,790.61 in unpaid rent due on July 01, 2018, with a stated effective vacancy date of July 14, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of posting it to the door of the rental unit on July 04, 2018. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on July 07, 2018, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,107.60, as established in the tenancy agreement. I accept the evidence before me that the tenant

has failed to pay rental arrears in the amount of \$1,790.61, comprised of the balance of unpaid rent owed by July 01, 2018 for the months of June 2018 and July 2018.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

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 corrected effective date of the Notice, July 17, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,790.61 for unpaid rent owed by July 01, 2018, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,890.61 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 31, 2018

A handwritten signature in black ink, appearing to read 'J Randhawa', is written over a horizontal line.

J Randhawa, Adjudicator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)

