



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL-S OPR**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A monetary award for unpaid rent and utilities pursuant to section 67;
- Authorization to apply the security deposit to the monetary award pursuant to section 72; and
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenants under the *Act* for the following:

- An order to cancel the application for an order of possession under the Ten-Day Notice pursuant to section 46;
- An order granting the tenants more time to file an application for an order of possession under the Ten-Day Notice pursuant to section 66; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The tenants did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional ten minutes, to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The landlord testified the tenants were personally served with the Notice of Hearing and Application for Dispute Resolution on October 23, 2018. Pursuant to section 89 of the *Act*, I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution on October 23, 2018.

The landlord stated she had not been served with the tenants' Notice of Hearing and Application for Dispute Resolution. Pursuant to section 89 of the *Act*, I find the landlord was not served with the Notice of Hearing and Application for Dispute Resolution.

The landlord requested an amendment to the landlord's application to increase the monetary order requested to include additional outstanding rent for the month of November 2018. The landlord's application, submitted in October 2018, pre-dated the due date for rent for November 2018 and as such the landlord's claim does not reflect outstanding rent for November 2018.

The landlord also requested an amendment to the landlord's application to change the monetary order requested with respect to outstanding utilities. The landlord explained that since the filing of the application, the landlord has received the invoices for utilities claimed owing by the tenants. In the landlord's application and Monetary Order Worksheet, the landlord provided estimates only of the amount of utilities owing. The landlord clarified the amounts claimed from the tenants for outstanding rent and utilities were as follows:

ITEM	AMOUNT
Outstanding rent October 2018	\$2,100.00
Outstanding rent November 2018	\$2,600.00
City services owing for October and November 2018	\$284.00
Hydro owing for October and November 2018	\$175.07
Gas owing for October and November 2018	\$108.31
TOTAL of LANDLORD'S CLAIM - RENT AND UTILITIES	\$5,267.38

Section 4.2 of the *Rules of Procedure* provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenants could reasonably anticipate the landlord's claim would be amended to include outstanding rent for the month of November 2018 and the amount of utilities payable under the tenancy agreement as the invoices became available. I find the amendments would not be prejudicial to the respondents. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to increase the landlord's overall claim for unpaid rent for the month of November 2018 and for the unpaid utilities as referenced above.

The total monetary order requested by the landlord is **\$5,267.38** as well as \$100.00 reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?
Is the landlord entitled to a monetary order for outstanding rent and utilities pursuant to section 67 of the *Act*?
Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?
Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenants did not appear at the hearing.

The parties entered into 1-year fixed term tenancy agreement beginning October 1, 2018 for monthly rent of \$2,600.00 payable on the first of the month. The agreement included a requirement by the tenants to pay utilities. The tenants paid a security deposit to the landlord at the beginning of the tenancy of \$750.00. The landlord holds the security deposit. The tenants have not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The landlord submitted a copy of the tenancy agreement.

The landlord testified the tenants did not pay all the rent owing for October 2018 and a balance for that month of \$2,100.00 remains owing. The tenants did not pay rent for November 2018. The landlord testified the tenants are currently in arrears of rent of \$4,700.00.

The landlord testified the tenants have not made any payment on utilities during the tenancy. The landlord testified the tenants owe the following for outstanding rent and utilities:

ITEM	AMOUNT
Outstanding rent October 2018	\$2,100.00
Outstanding rent November 2018	\$2,600.00
City services owing for October and November 2018	\$284.00
Hydro owing for October and November 2018	\$175.07
Gas owing for October and November 2018	\$108.31
TOTAL	\$5,267.38

The landlord testified a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) dated October 12, 2018 for unpaid rent and utilities was personally served upon the tenants on October 17, 2018 with an effective date of October 22, 2018, corrected to October 27, 2018. The landlord filed a witnessed Proof of Service of the Ten-Day Notice. The landlord submitted a copy of the Ten-Day Notice as evidence. The Ten-Day Notice provides 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, corrected to October 27, 2018.

The landlord testified the tenants did not pay rent after service of the Ten-Day Notice and the landlord was not served with a Notice of Hearing or Application for Dispute Resolution by the tenants. The landlord testified she learned of the tenants’ application during the hearing.

The landlord provided uncontradicted testimony the full amount claimed remains unpaid and owing to the landlord.

The landlord submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent outstanding as stated above at the time the Ten-Day Notice was served, subject to the referenced amendments.

The tenants continue to occupy the unit.

Analysis

As the tenants did not attend the hearing or submit evidence, I dismiss their application without leave to reapply.

With respect to the landlord's application, I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the landlord served the tenants with the Ten-Day Notice on October 17, 2018 in accordance with section 88 of the *Act*.

I find the tenants did not pay the overdue rent or utilities. I find the tenants filed an Application for Dispute Resolution to dispute the Ten-Day Notice on October 23, 2018, outside the five-day period following service.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice (corrected to October 27, 2018) requiring the tenants to vacate the rental unit by that date.

As the tenants continue to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent and utilities in the amount of **\$5,267.38**.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

In summary, I grant the landlord a monetary order for **\$4,617.38** calculated as follows:

ITEM	AMOUNT
Outstanding rent October 2018	\$2,100.00
Outstanding rent November 2018	\$2,600.00
City services owing for October and November 2018	\$284.00
Hydro owing for October and November 2018	\$175.07
Gas owing for October and November 2018	\$108.31
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$750.00)
TOTAL	\$4,617.38

Conclusion

I grant the landlord a monetary order in the amount of **\$4,617.38**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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 29, 2018

Residential Tenancy Branch