



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing involved cross applications made by the parties. On May 6, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On May 10, 2019, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

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

The Tenant could not answer whether she served the Landlord the Notice of Hearing package. However, the Landlord confirmed that the Tenant served him the Notice of Hearing package by registered mail and he received it on May 6, 2019. Based on this undisputed testimony, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Landlord advised that he served the Tenant the Notice of Hearing package and evidence by registered mail on May 14, 2019 and the Tenant confirmed receiving this package. Based on this undisputed testimony, as these documents were served in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package and evidence.

With respect to the Landlord’s Application for monetary compensation related to carpet cleaning, this claim was made prematurely as the tenancy has not yet ended. As such, I dismiss the Landlord’s Application for monetary compensation for carpet cleaning with leave to reapply.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2018 and that rent was established at \$1,600.00 per month, due on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$50.00 were also paid.

All parties agreed that the Notice was served in person to the Tenant on May 4, 2019. The Landlord advised that the Notice indicated that \$4,600.00 was outstanding on May 1, 2019. The Notice also indicated that the effective end date of the tenancy was May 14, 2019.

The Landlord advised that rent was outstanding in the following amounts:

Rent arrears	Amount
November 2018 – Outstanding rent	\$750.00
December 2018 – Outstanding rent	\$350.00
January 2019 – Outstanding rent	\$800.00
February 2019 – Outstanding rent	\$100.00
March 2019 – Outstanding rent	\$400.00
April 2019 – Outstanding rent	\$600.00
May 2019 – Outstanding rent	\$1,600.00
Total Monetary Award	\$4,600.00

In addition, the Landlord advised that June 2019 rent was not paid either. He referenced files submitted as documentary evidence to support that these amounts were not paid.

As such, he is seeking a Monetary Order in the amount of **\$6,200.00** for the rent arrears to date.

The Tenant advised that her husband was deported in April 2019 and that she is on welfare. She submitted that her husband stated that the rent could be collected from her or their son. She stated that her husband had paid the rent ordinarily, and that he had been dishonest about not paying the rent in the past. She acknowledged that the rent payments that the Landlord referenced are accurate and that the rent has not been paid in the amount claimed. She confirmed that they did not have authority under the *Act* to withhold the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants received the Notice on May 4, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or 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 to which the notice relates by that date."* As the fifth day fell on Thursday May 9, 2019, the Tenants must have paid the rent in full or disputed the Notice by this day at the latest. The undisputed evidence is that the Tenants made this Application on May 6, 2019. However, The Tenants did not have any

authorization that permitted them to withhold the rent. As such, I have dismissed her Application in its entirety.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being served the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*. 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 Tenants have 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*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a monetary award in the amount of **\$6,200.00**, which is comprised of rent owed up until the end of June 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
November 2018 – Outstanding rent	\$750.00
December 2018 – Outstanding rent	\$350.00
January 2019 – Outstanding rent	\$800.00
February 2019 – Outstanding rent	\$100.00
March 2019 – Outstanding rent	\$400.00
April 2019 – Outstanding rent	\$600.00
May 2019 – Outstanding rent	\$1,600.00
June 2019 – Outstanding rent	\$1,600.00
Filing fee	\$100.00
Total Monetary Award	\$6,300.00

Conclusion

I dismiss the Tenants' Application and I grant an Order of Possession to the Landlords effective on **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of **\$6,300.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: June 14, 2019

Residential Tenancy Branch