



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, OPUM-DR, ERP

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord’s application was adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, and dealt with the landlord’s application pursuant to the *Residential Tenancy Act* (“Act”) for:

- an Order of Possession for unpaid rent or utilities pursuant to section 55;
- a monetary order for unpaid rent or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- an order to the landlord to make repairs or emergency repairs to the rental unit pursuant to section 33

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and were given a full opportunity to be heard, to present sworn 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 and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing, their application is dismissed without leave to reapply.

The landlord testified that he had served the hearing package and evidence on the tenants on January 23, 2020. In accordance with sections 88 and 90 of the *Act*, I find the tenants duly with the landlord's hearing package and evidentiary materials.

The landlord testified that the tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated January 5, 2020, with a corrected effective date of January 15, 2020. In accordance with section 88 of the *Act*, I find that the tenants duly served with the landlord's 10 Day Notice.

Although the landlord had applied for a monetary Order of \$1,122.00 in their initial claim, since they applied another \$1,700.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$1,122.00 to \$2,822.00 to reflect the 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 based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Background and Evidence

The landlord testified to the following facts. This month-to-month tenancy began on November 1, 2019, with monthly rent set at \$850.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$425.00, which he still holds.

The landlord served the tenants with a 10 Day Notice on January 5, 2020 for failing to pay the January 2020 rent. The landlord testified that the tenants also owe \$172.00 in utilities. The landlord testified in the hearing that the tenants have not paid any of the outstanding rent or utilities, nor have they paid the rent for February or March 2020. The landlord is seeking an Order of Possession, as well as a Monetary Order as outlined in the table below:

Item	Amount
Unpaid Rent for January 2020	\$850.00
Unpaid Rent for February 2020	850.00
Unpaid Rent for March 2020	850.00
Unpaid Utilities	172.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$2,822.00

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the rent in full, within five days of receiving the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being served the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on January 15, 2020, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by January 15, 2020. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenants have not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, 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 any monthly rent for the months of January 2020 through to March 2020. The landlord also provided undisputed testimony that the tenants failed to pay \$172.00 in outstanding utilities. Therefore, I find that the landlord is entitled to a monetary order in the amount of \$2,722.00.

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

The landlord continues to hold the tenants' security deposit of \$425.00. 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.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. 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 \$2,397.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, utilities, and the filing fee.

Item	Amount
Unpaid Rent for January 2020	\$850.00
Unpaid Rent for February 2020	850.00
Unpaid Rent for March 2020	850.00
Unpaid Utilities	172.00
Recovery of Filing Fee	100.00
Less Security Deposit	-425.00
Total Monetary Order	\$2,397.00

The tenant 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: March 27, 2020

Residential Tenancy Branch