



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPUM-DR, OPU-DR, FFL**

Introduction

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

- An order of possession for unpaid rent and/or utilities and a monetary order for both, by direct request pursuant to sections 46, 55 and 67.
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:45 p.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 p.m. 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 KK attended the hearing ("hereinafter referred to as the landlord"), assisted by an agent/interpreter, GT and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified she personally served the tenant AG with the Application for Dispute Resolution Proceedings Package on March 23, 2020 at the tenant's residence. I am satisfied the tenant was duly served on that day in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue

Since filing the Application for Dispute Resolution, the landlord testified the amount of arrears has increased. In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the Act I find it reasonable to grant the landlord's application to amend the Application for Dispute Resolution to include additional arrears.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Is the landlord entitled to a monetary order?

Should the filing fee be recovered?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord provided the following undisputed testimony. The rental unit is a self-contained condominium owned by the landlord. A copy of the tenancy agreement signed on November 25, 2019 was provided as evidence. The tenancy began on December 1, 2019 with rent set at \$1,900.00 payable on the first day of each month, utilities not included. The tenancy agreement indicates a security deposit of \$950.00 was collected by the landlord. Although two tenants signed the tenancy agreement, only one moved in. The two named parties are mother and son, the son never moved in, as far as the landlord knows.

The tenant failed to pay \$500.00 of the \$1,900.00 rent for the month of January (a total of \$2,400.00). On February 1st, the tenant also failed to pay rent for that month. On February 3rd, the landlord delivered to the tenant a '*notice to vacate*' letter stating January and February rent was not paid, utility bills of January was not paid and that the tenant had blocked the landlord's contact number. The landlord testified that she provided a copy of the hydro bill in the amount of \$322.52 with the letter.

On February 7, 2020, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") together with the co-landlord, JS. The landlord also sent another copy of the Notice to the tenant by registered mail on February 8, 2020. The tracking number for the mailing is recorded on the cover page of this decision. A copy of the Notice was provided as evidence. The landlord testified that both pages one and two of the Notice were given to the tenant on both occasions, although only page one was provided as evidence. The Notice states the tenant failed to pay rent in the amount of \$2,665.00 that was due on February 7, 2020. The landlord acknowledges she made a '*math mistake*' when issuing the Notice. Instead of indicating the tenant owed \$2,400.00 in rent, an additional \$265.00 was included which

represents unpaid utilities. No utility bills in the amount of \$265.00 were provided as evidence by the landlord.

The Notice also indicates the tenant failed to pay utilities in the amount of \$322.52 following written demand on February 7, 2020. The effective date noted on the Notice is February 17, 2020.

The landlord testified that the tenant paid \$500.00 toward outstanding arrears in rent on February 10th. A further \$635.00 in rent was paid on February 20th and \$765.00 on March 3rd. These payments were made by e-transfers directly from the bank, so no receipts were issued. The tenant continues to fail to pay the hydro utility in the amount of \$322.52 covering the period of November 28, 2019 to January 27, 2020. A further \$253.68 in hydro utility up to March 30, 2020 is also due. Copies of the hydro bills were provided as evidence by the landlord.

Analysis

Based on the undisputed testimony of the landlord, I am satisfied the tenant was duly served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 7, 2020 in accordance with sections 88 and 90 of the *Act*.

Section 46 of the *Act* states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - a) pay the overdue rent, in which case the notice has no effect, or
 - b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - b) must vacate the rental unit to which the notice relates by that date.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice.

The tenant was required to vacate the premises by the effective date of February 17, 2020. As this has not happened, I award the landlord an Order of Possession which must be served on the tenant as soon as possible. If the tenant does not vacate the

rental unit within two days of service, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order

Section 26 of the *Act* states 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. I find the tenant did not have any right under this *Act* to deduct any portion of the rent and that the tenant failed to pay rent in full when it was due under the tenancy agreement.

I find the amount of rent shown as due on the Notice dated February 7, 2020 was incorrect as it did not match the amount of rent owing on that day as testified by the landlord. Despite this, section 46(4) allows the tenant the ability to dispute the amounts shown on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant did not do so. Based on the evidence before me, I find the landlord is entitled to the following amounts:

Item	Amount
January rent	\$500.00
February rent	\$1,900.00
Less payment made February 10 th	(\$500.00)
Less payment made February 20 th	(\$635.00)
March rent	\$1,900.00
Less payment made March 3 rd	(\$765.00)
April rent	\$1,900.00
Total	\$4,300.00

Based on the evidence before me and the landlord's undisputed testimony, I am satisfied the tenant was required to pay the utilities for the rental unit and did not pay them. I award the landlord (\$322.52 and \$253.68 = **\$572.60**) as compensation for the unpaid utilities in accordance with section 67 of the *Act*.

As the landlord was successful in her application, the filing fee of **\$100.00** will be recovered.

Item	Amount
Arrears in rent	\$4,300.00
Unpaid utility bills	\$572.60

Filing fee	\$100.00
Total	\$4,972.60

Based on the testimony of the landlord, it is unclear to me whether the landlord continues to hold the tenant's security deposit. If the landlord continues to hold the tenant's security deposit, the landlord is entitled to retain the full security deposit in partial satisfaction of the monetary order pursuant to section 72 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$4,972.60**.

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 22, 2020

Residential Tenancy Branch