



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2gether Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on May 29, 2020. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided testimony. The tenant did not attend the hearing.

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

Emailed documents will be deemed received as follows:

- If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
- If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
- If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

The Landlord stated he sent the Notice of Dispute Resolution and evidence to the Tenant's email address on April 10, 2020, as listed on his application, and the Tenant ignored the email, and has since stopped communicating with him. The Landlord stated that leading up to this email he sent with the dispute resolution proceeding documents, the Tenant would routinely use this email address to communicate with the Landlord. Ultimately, I find the Tenants are deemed served with the Landlord's package on April 13, 2020.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application 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, the application may be amended at the hearing.

Further, the Landlord requested to amend his application to allow him to retain the security deposit to offset rent owed. In consideration of both of these requests, I hereby amend the Landlord's application accordingly.

The Landlord was provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that rent, in the amount of \$980.00, is due on the first day of each month, and that he holds a security and pet deposit of \$980.00, as per the tenancy agreement provided into evidence. The Landlord stated that the Tenant is also responsible for paying \$80.00 per month for water usage, as this is not included in base rent.

The Landlord testified that he issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by giving it to the Tenant in person on March 2, 2020. The Landlord indicated on the Notice that the amount owing at that time was \$960.00. However, the Landlord stated that it was actually more than this, and since this was his first time dealing with this type of issue, he wasn't sure how to list what was owed. The Landlord clarified that at the time the Notice was issued, the Tenant owed \$2,020.00. The Landlord testified that the Tenant has made partial payments over the past few months, as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
December 31, 2019	Unpaid Balance			\$400.00
January 1, 2020	Rent Due	\$1,060.00	\$400.00	\$1,060.00
January 5, 2020	Rent Payment		\$660.00	\$400.00
February 1, 2020	Rent Due	\$1,060.00		\$1,460.00
February 12, 2020	Rent Payment		\$500.00	\$960.00
March 1, 2020	Rent Due	\$1,060.00		\$2,020.00
April 1, 2020	Rent Due	\$1,060.00		\$3,080.00
May 1, 2020	Rent Due	\$1,060.00		\$4,140.00
Total Accrued Balance				\$4,140.00

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants owed past due rent at the time the 10 Day Notice was issued. The 10 Day Notice was personally served to the Tenants on March 2, 2020, for \$960.00 in unpaid rent plus \$80.00 in utilities. However, the Landlord explained in detail that it was actually more than this. I find the Tenants received the 10 Day Notice on March 2, 2020.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenants paid the total balance outstanding within 5 days of being served with the 10 Day Notice. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay \$4,140.00 in past due rent and water utilities.

The Landlord requested that they be able to retain the security deposit of \$980.00 to offset the amount owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in

this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent/utilities as above	\$4,140.00
Other:	
Filing fee	\$100.00
Less:	
Security and Pet Deposit currently held by Landlord	(\$980.00)
TOTAL:	\$3,260.00

Conclusion

The landlord is granted an order of possession effective **two 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 and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,260.00**. 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) and 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: May 29, 2020

Residential Tenancy Branch