



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

On October 15, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent based on the Notice pursuant to Section 46 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

K.G. and T.B attended the hearing as agents for the Landlord, and the Tenant attended the hearing as well. All parties in attendance provided a solemn affirmation.

K.G. advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on November 10, 2020. The Tenant advised that her daughter received two registered mail tracking slips and placed them where they were not seen until it was too late to pick up the packages. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were deemed to have received the Landlord’s Notice of Hearing and evidence packages five days after they were mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenant advised that they did not submit any evidence for consideration on this file.

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?
- Is the Landlord entitled to a Monetary Order for compensation?
- 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 August 18, 2018, that rent was established at an amount of \$2,300.00 per month, and that it was due on the first day of each month. A security deposit of \$1,150.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

K.G. advised that the Tenants were served a Two Month Notice to End Tenancy for Landlord's Use of Property on July 29, 2020 with an effective end date of tenancy of September 30, 2020. She did not apply for an Order of Possession on this notice but did apply for rental arrears up to the effective end date of the tenancy. The Tenants did not dispute this notice either. A hearing was scheduled, and the Landlord was awarded a Monetary Order for the rental arrears up to September 30, 2020 (the relevant file number is noted on the first page of this Decision).

Despite the tenancy ending due to the Two Month Notice to End Tenancy for Landlord's Use of Property, K.G. stated that the Tenants were then served a 10 Day Notice to End Tenancy for Unpaid Rent on October 2, 2020 by hand, and the Tenant confirmed that they received this. The Notice indicated that \$2,300.00 was due on October 1, 2020. The effective end date of the tenancy was noted on the Notice as October 15, 2020.

She submitted that the Tenants did not pay October 2020 rent at all, nor have the Tenants any rent since service of this Notice. As the Tenants have not paid rent for October 2020 or disputed the Notice, the Landlord is seeking an Order of Possession. In addition, the Landlord is seeking a Monetary Order in the amount of **\$9,200.00** for the rental arrears of October, November, and December 2020, and January 2021.

The Tenant advised that she did not submit any evidence on this file because she did not know how to, despite acknowledging that she had contacted the Residential Tenancy Branch in November 2020. She stated that she attempted to electronically transfer \$2,000.00 to the Landlord on October 2, 2020 but the Landlord refused this payment. However, she did not have any evidence of such attempted payment. As well, even if she attempted to pay this to the Landlord, she made no attempts to pay the remaining \$300.00 that was outstanding.

K.G. advised that the Tenant was on automatic withdrawal for rent payments and that the Landlord did not reject any alleged payments from the Tenants.

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.

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 Landlord complies 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

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.

The undisputed evidence before me is that the Tenants were served the Notice on October 2, 2020. According to Section 46(4) of the *Act*, the Tenants had 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 Tenants received the Notice on October 2, 2020, they must have paid the rent in full or disputed the Notice by October 7, 2020, at the latest. However, there is insufficient evidence to support that the Tenants paid the full amount of rent or disputed the Notice by October 7, 2020.

Based on the evidence before me, I am satisfied that the Tenants did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenants did not pay the rent in full and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

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 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenants.

I also grant the Landlord a monetary award in the amount of **\$9,200.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, the Landlord may ordinarily apply the security deposit towards this debt. However, the security deposit has already been awarded to the Landlord in the previous Decision.

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
Rental arrears for October 2020	\$2,300.00

Rental arrears for November 2020	\$2,300.00
Rental arrears for December 2020	\$2,300.00
Rental arrears for January 2021	\$2,300.00
Filing Fee	\$100.00
Total Monetary Award	\$9,300.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$9,300.00** 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: January 21, 2021

Residential Tenancy Branch