



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 February 9, 2021. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- to recover the filing fee from the tenant for the cost of this application.

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

The Landlord stated that he sent a copy of the Application for Dispute Resolution along with supporting documentary evidence to the rental unit by registered mail on November 26, 2020. Proof of mailing was provided into evidence. I find the tenant received this package on December 1, 2020, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

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.

In consideration of this, I allow the Landlord to amend their application to include rent that has accrued since the original application date.

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.

Issues 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?

Background and Evidence

The Landlord testified that rent, in the amount of \$1,900.00, is due on the first day of each month. The Landlord holds a security deposit of \$950.00.

The Landlord testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting it to the door of the rental unit on October 18, 2020. The amount owing at that time was \$1,900.00, which was for October 2020 rent. The Landlord explained the following with respect to payments and accruals for rent:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
October 1, 2020	Rent Due	\$1,900.00	\$0	\$1,900.00
November 1, 2020	Rent Due	\$1,900.00	\$0	\$3,800.00
November 2, 2020	Rent Payment		\$1,900.00	\$1,900.00
November 25, 2020	Rent Payment		\$1,900.00	\$0
December 1, 2020	Rent Due	\$1,900.00		\$1,900.00
December 25, 2020	Rent Payment		\$1,900.00	\$0
January 1, 2021	Rent Due	\$1,900.00	\$0	\$1,900.00
January 25, 2021	Rent Payment		\$1,900.00	\$0
February 1, 2021	Rent Due	\$1,900.00	\$0	\$1,900.00
Total Accrued Balance				\$1,900.00

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 tenant owed \$1,900.00 in past due rent at the time the 10 Day Notice was issued on October 18, 2020. The landlord issued the 10 Day Notice by posting it to the door of the rental unit on that same day, and I find the tenant received the 10 Day Notice on October 21, 2020, 3 days after it was posted, pursuant to section 90 of the *Act*.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant made a payment on November 2, 2020, I note this was not paid within the allowable 5 day window. As such, I find the tenant is 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 tenant.

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 before me to demonstrate that the tenant currently owes and has failed to pay \$1,900.00 in past due rent.

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 Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$1,900.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$950.00)
TOTAL:	\$1,050.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails 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 **\$1,050.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails 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: February 09, 2021

Residential Tenancy Branch