



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KITSILANO MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-PP, MNRL-S FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 8, 2021 (10 Day Notice), for a monetary order for unpaid rent or utilities, to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord, MJ (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated January 21, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service at the rental unit address on January 22, 2021 in the morning. Based on the undisputed testimony before me, and considering the Proof of Service document submitted in evidence, I accept that the tenant was sufficiently served as of January 22, 2021 as claimed by the agent. I further find that this matter was undisputed by the tenant as the tenant did not attend the hearing.

Preliminary and Procedural Matters

The agent testified that since filing their application, the tenant owes a total amount of \$9,200.00 in rent arrears, which will be described in detail later in this decision and that \$1,850.00 was paid on April 15, 2021 by the tenant towards rent arrears, which leaves a

rent arrears balance as of the date of this hearing in the amount of \$7,350.00 before the filing fee. The agent requested to have the additional rent arrears added to the claim and I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application from \$5,219.25 to \$7,350.00, pursuant to section 64(3) of the Act.

In addition, the agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As there was no email address for the tenant, the decision will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 10 Day Notice?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on January 15, 2016. The tenant paid a security deposit of \$625.00 at the start of the tenancy, which has accrued \$0.00 in interest. The landlord continues to hold the tenant's security deposit. Monthly rent is due on the 15th day of each month.

The agent confirmed service of the 10 Day Notice by personal service on the tenant at 12:00 p.m. on January 8, 2021. A Proof of Service document supporting the agent's

testimony was submitted in evidence. The 10 Day Notice included an effective vacancy date of January 18, 2021. The agent affirmed that the tenant did not dispute the 10 Day Notice and failed to vacate the rental unit and continues to occupy the rental unit. The agent stated that the landlord is seeking an order of possession as the tenant continues to occupy the rental unit and that the landlord has suffered a loss of rent as follows:

ITEM DESCRIPTION	AMOUNT
January 15, 2020 rent	\$425.00 owing
February 15, 2020 rent	\$425.00 owing
March 15, 2020 rent	\$425.00 owing
April 15, 2020 rent	\$425.00 owing
May 15, 2020 rent	\$425.00 owing
June 15, 2020 rent	\$425.00 owing
July 15, 2020 rent	\$425.00 owing
August 15, 2020 rent	\$425.00 owing
September 15, 2020 rent	\$425.00 owing
October 15, 2020 rent	\$425.00 owing
November 15, 2020 rent	\$425.00 owing
December 15, 2020 rent	\$425.00 owing
January 15, 2021 rent	\$425.00 owing
February 15, 2021 rent	\$1,225.00 owing
March 15, 2021 rent	\$1,225.00 owing
April 15, 2021 rent	\$1,225.00 owing
TOTAL	\$9,200.00
<i>(Less payment made on April 15, 2021 by tenant of \$1,850.00)</i>	<i>-\$1,850.00</i>
SUBTOTAL OWING FO RENT ARREARS	\$7,350.00

The agent is seeking to retain the tenant's security deposit from the amount owing and the filing fee for this application.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 46 of the Act states that if the tenant once served with the 10 Day Notice (Notice) does not dispute the Notice within 5 days of receiving the Notice, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit on the effective vacancy date. In the matter before me, the tenant did not dispute the Notice and as a result, I find the tenancy ended on the effective vacancy date, which was January 18, 2021. While January 2021 rent did not become due until January 15, 2021, I find that the 10 Day Notice is still valid as some amount of rent was owed as of the date it was served. I amend the 10 Day Notice pursuant to section 68(1) of the Act accordingly.

As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I have reviewed the Notice and find that it complies with section 52 of the Act.

Monetary order – Section 26 of the Act applies and states that a tenant is responsible to pay the rent in accordance with the tenancy agreement on the date that it is due. In the matter before me, the \$1,225.00 monthly rent was due on the 15th day of each month. I find the tenant breached section 26 of the Act by failing to pay the rent as claimed by the landlord. Therefore, pursuant to section 67 of the Act, I find the landlord has met the burden of proof and that the tenant owes **\$7,350.00 in rent arrears**, as described in the table above and which includes the tenants' payment of \$1,850.00 on April 15, 2021.

In addition, as the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I find the landlord's total monetary claim is **\$7,450.00** comprised of loss of rent and the filing fee as described above.

As the landlord continues to hold the tenant's security deposit of \$625.00, which has accrued no interest, I authorize the landlord to retain the tenant's entire \$625.00 security deposit in partial satisfaction of the landlord's monetary claim of \$7,450.00. I find the tenant continues to owe the balance to the landlord in the amount of **\$6,825.00**. Accordingly, I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$6,825.00**.

Conclusion

The landlord's application is fully successful. The tenancy ended on January 18, 2021. The tenant has been overholding the rental unit since July 31, 2021.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain the tenant's full security deposit of \$625.00 to offset the total amount of \$7,450.00 owing by the tenant to the landlord. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$6,825.00.

The decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant. The landlord must serve the orders on the tenant. The tenant is reminded that they may be held liable for all enforcement costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2021

Residential Tenancy Branch