



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR

Introduction

On February 19, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*.

This hearing was scheduled to commence via teleconference at 9:30 AM on April 16, 2021.

Both Landlords attended the hearing; however, the Tenant did not attend at any point during the 16-minute teleconference. At the outset of the hearing, I advised the Landlords that recording of the hearing was prohibited. They were reminded to refrain from doing so and they acknowledged this term. All parties in attendance provided a solemn affirmation.

The Landlords advised that they served the Notice of Hearing and evidence package to the Tenant by registered mail on March 22, 2021 (the registered mail tracking number is noted on the first page of this Decision). The tracking history confirmed that this package was delivered on March 23, 2021. Based on this undisputed evidence, I am satisfied that the Tenant was sufficiently served the Notice of Hearing and evidence package. As such, I have accepted the Landlords’ evidence and will consider it when rendering this Decision.

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

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?

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.

The Landlords advised that the tenancy started on May 15, 2020, that rent was established at an amount of \$1,250.00 per month, and that it was due on the first day of each month. A security deposit of \$625.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence. The dispute address on the Application was amended to reflect to the correct rental address.

They testified that the Notice was served by posting it to the Tenant's door on January 10, 2021. The Notice indicated that \$2,250.00 was owing for rent on January 1, 2021. The effective end date of the tenancy was noted as January 21, 2021.

The Landlords submitted that the Tenant only paid \$250.00 for December 2020 rent and did not pay any rent for January 2021. Thus, the Notice was served. As well, the Tenant has not paid any rent since service of the Notice either. They stated that the Tenant did not have any authorization to withhold any amount of rent from December 2020 onwards. As such, the Landlords are seeking an Order of Possession and a Monetary Order in the amount as follows:

- December 2020 rent: \$1,000.00
- January 2021 rent: \$1,250.00
- February 2021 rent: \$1,250.00
- March 2021 rent: \$1,250.00
- April 2021 rent: \$1,250.00
- Total rental arrears: **\$6,000.00**

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 Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent or utilities when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent or utilities in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, 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.

Regarding the unpaid rent, the undisputed evidence before me is that the Tenant was deemed to have received the Notice on January 13, 2021. According to Section 46(4) of the *Act*, the Tenant 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 Tenant was deemed to have received the Notice on January 13, 2021, she must have paid the rent in full or disputed the Notice by Monday January 18, 2021 at the latest. As the Tenant did not pay the rent in full or dispute the Notice, and as the Tenant did not have authorization from the Landlords, or a valid reason under the *Act* to withhold the rent, I find that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice. As such, I find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenant.

I also grant the Landlords a monetary award in the amount of **\$6,000.00** for the outstanding rental arrears.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlords

Item	Amount
Rental arrears for December 2020	\$1,000.00
Rental arrears for January 2021	\$1,250.00
Rental arrears for February 2021	\$1,250.00
Rental arrears for March 2021	\$1,250.00
Rental arrears for April 2021	\$1,250.00
Total Monetary Award	\$6,000.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. Should the Tenant 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 Landlords are provided with a Monetary Order in the amount of **\$6,000.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: April 16, 2021

Residential Tenancy Branch