



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:18 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenants were sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on January 25, 2021. The landlords provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with the Application and evidence on January 30, 2021, five days after mailing. The tenants did not submit any written evidence for this hearing.

The landlords testified that the tenants were served the 10 Day Notice dated December 7, 2020, by registered mail. The landlord provided the tracking information and proof of service in their evidentiary materials. In accordance with sections 88 and 90 of the *Act*,

the 10 Day Notice I find the 10 Day Notice deemed served on December 12, 2020, 5 days after mailing.

Preliminary Issue: Amendments to the Landlords' Application

The landlords submitted copies of further Notices to End Tenancy that have been served on the tenants since the filing of the original application on December 22, 2020. No amendments have been filed to include these additional Notices to End Tenancy.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

As no amendments have been filed in accordance with Rule 4.6 to include these additional Notices to End Tenancy, I will only consider the 10 Day Notice for Unpaid Rent dated December 7, 2020 as referenced in the original application.

Additionally, although the landlords had originally applied for a Monetary Order of \$2,707.54 in their initial claim, the tenants have failed to pay rent for the months of January 2021 through to April 2021. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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 landlord submitted an updated monetary order worksheet dated April 3, 2021 detailing the rent owed at the time of the hearing. Since the filing of this application, additional rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application from \$2,707.54 to \$3,705.80 to reflect the additional unpaid rent

that became owing by the time this hearing was convened as set out in this monetary order worksheet.

Issues to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent or money owed?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on September 1, 2011, with currently monthly rent set at \$869.18, payable on the first of every month. The tenants paid a security deposit in the amount of \$375, which the landlords still hold.

The landlords testified that the tenants have been repeatedly late in paying their rent, and submitted in evidence the multiple Notices to End Tenancy that have been served on the tenants. As noted above, I am only considering the 10 Day Notice to End Tenancy for Unpaid Rent dated December 7, 2020, which is the 10 Day Notice referenced on the original application that was filed on December 22, 2020.

The landlords served the tenants with a 10 Day Notice on December 7, 2020 by way of registered mail after the tenants have failed to pay the outstanding balance for the unpaid rent that we owed on December 1, 2020. The landlords testified that the tenants have only made partial payments, and at the time of the hearing the tenants owed a substantial amount of unpaid rent as set out in the monetary order worksheet dated April 3, 2011. The landlords are seeking the following monetary orders:

Item	Amount
Unpaid Rent for January 2021	\$851.72
Unpaid Rent for February 2021	869.18
Unpaid Rent for March 2021	869.18
Unpaid Rent for April 2021	869.18

Recovery of Filing Fee	100.00
Recovery of cost of registered mailing	146.60
Total Monetary Order Requested	\$3,705.86

The landlords are seeking an Order of Possession, as well as a Monetary Order for unpaid rent and money owed, and recovery of the filing fee.

Analysis

The landlords provided undisputed evidence at this hearing as the tenants did not attend. The landlords testified that the tenants have failed to pay the outstanding rent in full within five days of being deemed to have received the 10 Day Notice dated December 7, 2020. The tenants did not file an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on December 29, 2020, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 29, 2020. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. As the tenants have not moved out, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlords provided undisputed evidence that the tenants owed \$3,459.26 in outstanding rent. Therefore, I find that the landlords are entitled to a monetary order for this amount.

I allow the landlords to recover the \$100.00 paid for this application.

The landlords also applied to recover the costs of registered mailing. As section 72 of the *Act* only allows for recovery of the filing fee, and not the other costs associated with

filing of the application, I dismiss this portion of the landlords' claim without leave to reapply

The landlords continue to hold the tenants' security deposit of \$375.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlords' application to recover the cost of registered mailing without leave to reapply.

I issue a \$3,184.26 Monetary Order in favour of the landlord, which allows the landlords to recover unpaid rent, the filing fee for this application, and also allows the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent for January 2021	\$851.72
Unpaid Rent for February 2021	869.18
Unpaid Rent for March 2021	869.18
Unpaid Rent for April 2021	869.18
Recovery of Filing Fee	100.00
Less Security Deposit Held	-375.00
Total Monetary Order	\$3,184.26

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: April 21, 2021