



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR, OPR-DR, MNDL, MNDCL

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 landlord's 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 or money owed, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord 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 landlord and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenant was personally served with a copy of the dispute resolution hearing package ('Application') and evidence on January 30, 2021. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application and evidence on January 30, 2021. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was personally served the 10 Day Notice dated December 14, 2020. In accordance with section 88 of the *Act*, the 10 Day Notice I find the 10 Day Notice duly served on the tenant.

Although the landlord had applied for a Monetary Order of \$4,152.47 in their initial claim, the tenant failed to pay any rent for 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. Accordingly, have accepted the landlord's request to amend their original application from \$4,152.47 to \$4,673.47 to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed?

Is the landlord 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 October 1, 2009, with currently monthly rent set at \$733.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$297.50, which the landlord still holds. The landlord testified that \$113.00 of the monthly rent goes towards the hydro, while \$20.00 goes towards the cable.

The landlord served the tenant with a 10 Day Notice on December 14, 2020. The landlord testified that the tenant has only made a couple payments of \$250.00 towards the hydro owing, but has not paid the following amounts owed as set out in the table below. The landlord is seeking the following monetary orders:

Item	Amount
Original Rent in Arrears	\$1,572.00
Unpaid Rent for January 2021	733.00
Unpaid Rent for February 2021	733.00
Unpaid Rent for March 2021	771.00

Unpaid rent for April 2021	771.00
Hydro owing	373.05
Surcharge for suite	220.42
Less March 2021 payment towards hydro	-250.00
Less April 2021 payment towards hydro	-250.00
Total Monetary Order Requested	\$4,673.47

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

In addition to the unpaid rent and hydro, the landlord is seeking a monetary order in the amount of \$220.42 for a surcharge that has been assessed to the landlord. The landlord submitted a copy of a letter dated January 6, 2021 after the tenant notified the municipality of the landlord's secondary suites within the duplex. The letter states that properties containing a secondary suite are billed a daily charge for sewer and garbage collection, which resulted in a \$220.42 surcharge. The landlord is seeking to recover this surcharge from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing as the tenant did not attend. The landlord testified that the tenant has failed to pay the outstanding rent in full within five days of being served the 10 Day Notice dated December 14, 2020. The tenant did not file an application pursuant to section 46(4) of the *Act* within five days of being served the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on December 25, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 25, 2020. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is 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 landlord provided undisputed evidence that the tenant owed \$4,453.05 in outstanding rent and utilities. Therefore, I find that the landlord is entitled to a monetary order for this amount.

The landlord also applied to recover a surcharge after the tenant had reported the secondary suite. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord. Although the landlord was not accessed this surcharge until after the tenant had reported the secondary suite, I do not find that this surcharge is a direct result of the tenant's contravention of the *Act* or tenancy agreement, nor do I find that the landlord has demonstrated that the tenant is responsible for this surcharge prior to entering into this tenancy. Accordingly, I dismiss this portion of the landlord's claim without leave to reapply

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

The landlord continues to hold the tenant's security deposit of \$297.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant 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 issue a \$3,184.26 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
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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 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.

I dismiss the remaining portion of the landlord's application without leave to reapply.

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

Residential Tenancy Branch