



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

On January 27, 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”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 9:30 AM on May 18, 2021.

J.Y. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 21-minute teleconference. At the outset of the hearing, I advised J.Y. that recording of the hearing was prohibited. He was reminded to refrain from doing so and he acknowledged this term. All parties in attendance provided a solemn affirmation.

He advised that as per the tenancy agreement, only one of the Respondents named on this Application was the Tenant. As such, the second Respondent’s name was removed from the Style of Cause on this Decision.

He submitted that he served a Notice of Hearing and evidence package to the Tenant by registered mail on February 26, 2021 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that a notice card was left on March 1, 2021 for the Tenant to pick up this package; however, it went unclaimed. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing and evidence package five days after it was mailed. As

such, I have accepted the Landlord's 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

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fees?

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.

J.Y. advised that the most current tenancy agreement started on January 1, 2019, that rent was established at an amount of \$3,500.00 per month, and that it was due on the first day of each month. A security deposit of \$1,650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served to the Tenant on January 4, 2021 by registered mail. The Notice indicated that \$4,500.00 was owing on January 1, 2021 and that the effective end date of the tenancy was January 17, 2021. He stated that the Tenant owed \$1,000.00 for December 2020 rent and that the Tenant did not pay any rent for January 2021.

He advised that the Tenant then made the following payments:

- January 28, 2021: \$2,000.00
- February 8, 2021: \$850.00
- March 2, 2021: \$1,850.00

- April 5, 2021: \$2,200.00
- April 19, 2021: \$750.00
- Total rent paid: **\$7,650.00**

In addition to an Order of Possession for unpaid rent, the Landlord is also seeking a Monetary Order in the amount of **\$10,850.00**, which includes December 2020 rental arrears and May 2021 outstanding rent.

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 Landlord complies 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 Landlord 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 Landlord must be signed and dated by the Landlord, 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.

The undisputed evidence before me is that the Tenant was served the Notice on January 4, 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 9, 2021, he must have paid the rent in full or disputed the Notice by January 14, 2021 at the latest. As the Tenant did not pay the amount owing on the Notice or dispute the Notice within the five-day time frame, and as the Tenant did not have authorization from the Landlord, or a valid reason under the *Act* to withhold the rent, I find that the Tenant breached the *Act* and jeopardized the tenancy.

As the Landlord's 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 Landlord is 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 Landlord a monetary award in the amount of **\$10,850.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these debts.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for December 2020	\$1,000.00
Rental arrears for January 2021	\$1,500.00
Rental arrears for February 2021	\$2,650.00
Rental arrears for March 2021	\$1,650.00
Rental arrears for April 2021	\$550.00
Rental arrears for May 2021	\$3,500.00
Filing Fee	\$100.00
Security deposit	-\$1,650.00
Total Monetary Award	\$9,300.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlord 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 Landlord is provided with a Monetary Order in the amount of **\$9,300.00** 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: May 18, 2021

Residential Tenancy Branch