



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated April 28, 2021, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agent (landlord) attended the teleconference hearing. The tenants did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that each tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on May 1, 2021. The landlord provided the tracking numbers as proof of service, which are located on the style of cause page of this decision.

Based on the landlord's undisputed testimony and evidence, I accept that each tenant was sufficiently served under the Act and the hearing proceeded in the tenants' absence.

During the hearing the landlord 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on November 1, 2020, monthly rent payable by the tenants is \$1,990, due on the 1st day of the month, and a security deposit of \$995 was paid by the tenants at the beginning of the tenancy.

The landlord submitted that on March 8, 2021, the tenants were served with the Notice, by attaching it to the tenants' door, listing unpaid rent of \$1,990 as of March 1, 2021. The effective vacancy date listed on the Notice was March 21, 2021. Filed in evidence was a copy of the Notice and proof of delivery of the Notice.

The landlord stated that the tenants have not vacated the rental unit and did not pay the amount listed on the Notice within 5 days. In addition, although the tenants have made some rent payments since the Notice was issued, they were issued receipts on a "for use and occupancy" basis. The landlord said it was made clear to the tenants that their monthly rent payments did not reinstate the tenancy.

The landlord testified that the tenants made payments of \$900 and \$1,000 on April 1, 2021, and \$3,700 on May 3, 2021.

The landlord submitted that as of the day of the hearing, the tenants owed an outstanding balance of \$556. The landlord confirmed that amount included \$135 for three returned payments, or \$45 each.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenants applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

I find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, March 21, 2021.

As a result, I order the tenancy ended on March 21, 2021, and grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are advised that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenants.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their monetary claim in their application, to account for further unpaid rent as the tenants have yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that, although the tenants made further rent payments, the tenants owe the amount of unpaid rent and NSF fees of **\$496**, due under the tenancy agreement, not the total unpaid rent of \$556, as stated by the landlord. I reduced the amount of the NSF claim by \$60, as the landlord has charged \$45 each payment, rather than the \$25 fee allowed by section 7 of the Residential Tenancy Regulations.

I grant the landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the landlord has established a monetary claim of **\$596**, for the unpaid monthly rent, NSF fees and the filing fee, as noted above.

I grant the landlord a monetary order pursuant to section 67 of the Act for the amount of \$596.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are cautioned that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent has been granted in the above terms.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 27, 2021

Residential Tenancy Branch