



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated April 16, 2021 (10 Day Notice), for a monetary order for unpaid rent or utilities, to retain all or part of the tenant's security deposit to offset money owing, and to recover the cost of the filing fee.

An agent for the landlord, GS (agent), the landlord and the spouse of the landlord, GS (spouse) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the participants were 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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated May 4, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on May 6, 2021. The registered mail tracking number was submitted in evidence and has been included on the style of cause for ease of reference. According to the agent and the Canada Post registered mail tracking website, the registered mail package was successfully delivered on May 7, 2021. Given the above, I find the tenant was sufficiently served as of May 7, 2021 based on the above. I further find that this matter was undisputed by the tenant as the tenant did not attend the hearing, although duly served.

Preliminary and Procedural Matters

The participants were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The participants were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the participants were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The participants did not have any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As there was no email address for the tenant, the decision will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 10 Day Notice?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The agent confirmed that there was no written tenancy agreement, which I will address later in this decision. The agent testified that a month to month oral tenancy agreement began on February 1, 2021 and that monthly rent was \$1,000.00 per month and due on the first day of each month. The agent testified that the tenant paid a security deposit of \$500.00 at the start of the tenancy, which the landlord continues to hold.

The agent confirmed service of the 10 Day Notice by personal service on the tenant's brother between 5:00 p.m. and 6:00 p.m. on April 16, 2021. The 10 Day Notice included an effective vacancy date of April 26, 2021. The agent affirmed that the tenant did not dispute the 10 Day Notice, failed to pay the \$1,000.00 rent due April 1, 2021 within 5 days of being served with the 10 Day Notice and has failed to vacate the rental unit.

The agent provided testimony as follows:

RENT AMOUNT AND DUE DATE	AMOUNT PAID BY TENANT
1. April 1, 2021 rent due of \$1,000.00	April 17, 2021 \$160.00 paid towards April 2021 rent
	May 3, 2021 \$500.00 paid towards April 2021 rent
	Between May 4-20, 2021 \$400.00 paid towards April 2021 rent, leaving \$60.00 credit towards May 2021 rent
2. May 1, 2021 rent due of \$1,000.00	May 21, 2021 \$1050.00 paid towards May 2021 rent, leaving \$110.00 credit towards June 2021 rent
3. June 1, 2021 rent due of \$1,000.00	No amount paid in June 2021 leaving \$890.00 rent arrears for June 2021 rent.

The landlord is seeking an order of possession based on the undisputed 10 Day Notice, offset the unpaid rent/loss of rent owing with the security deposit, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence of the landlord and the undisputed testimony provided by the landlord and agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 46 of the Act states that if the tenant once served with the 10 Day Notice does not dispute the 10 Day Notice within 5 days of receiving the 10 Day Notice, the tenant is conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the effective vacancy date. In the matter before me, the tenant did not dispute the 10 Day Notice, nor did they pay the full amount of rent owing as of April 1, 2021 once served on April 16, 2021 with the 10 Day Notice. As a result, I find the tenancy ended on the effective vacancy date, which was April 26, 2021.

As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I have reviewed the Notice and find that it complies with section 52 of the Act.

Monetary order – Section 26 of the Act applies and states that a tenant is responsible to pay the rent in accordance with the tenancy agreement on the date that it is due. In the matter before me, I find the due date of rent was the first day of each month based on the undisputed evidence before me. I find the tenant breached section 26 of the Act by failing to pay the rent as claimed by the landlord. Therefore, pursuant to section 67 of the Act, I find the landlord has met the burden of proof and that the tenant owes **\$890.00** in rent arrears, as described in the table above.

In addition, as the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I find the landlord's total monetary claim is **\$990.00** comprised of loss of rent and the filing fee as described above.

As the landlord continues to hold the tenant's security deposit of \$500.00, which has accrued no interest, I authorize the landlord to retain the tenant's entire \$500.00 security deposit, which includes \$0.00 in interest, in partial satisfaction of the landlord's monetary claim of \$990.00. I find the tenant continues to owe the balance to the landlord in the amount of **\$490.00**. Accordingly, I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$490.00**.

I caution the tenant to comply with section 26 of the Act in the future.

I caution the landlord to comply with section 13(1) of the Act in the future, which requires that all tenancy agreements be in writing after January 1, 2004.

Conclusion

The landlord's application is fully successful. The tenancy ended on April 26, 2021. The tenant has been overholding the rental unit since that date.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain the tenant's full security deposit of \$500.00 to offset the total amount of \$990.00 owing by the tenant to the landlord. The landlord has been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$490.00.

The decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant. The landlord must serve both orders on the tenant. The tenant is reminded that they may be held liable for all enforcement costs related to both orders.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 10, 2021

Residential Tenancy Branch