



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, OPU-DR, OPUM-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On March 5, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 9, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act* and seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with A.C. attending as co-owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by email on or around March 11, 2021 and A.C. confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been sufficiently served the

Notice of Hearing and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

A.C. advised that the Landlord's Notice of Hearing and evidence package was served to the Tenant by email on or around March 15, 2021 and the Tenant confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been sufficiently served the Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

He also advised that additional evidence was served to the Tenant by hand on June 5, 2021. The Tenant confirmed that he received this evidence and that he was prepared to respond to it. While this evidence was not served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, as the Tenant was prepared to respond to this evidence, I have accepted the Landlord's late evidence and it will be considered 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 Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

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.

All parties agreed that the tenancy started on August 15, 2018, that rent was established at an amount of \$1,600.00 per month, and that it was due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that the Notice was served by hand likely on March 2, 2021. The Notice indicated that \$1,600.00 was owing for rent on February 1, 2021 and that \$1,600.00 was owing for rent on March 1, 2021. As well, it indicated that \$257.42 was owing for utilities and that a written demand was given for these utilities on February 2, 2021. The effective end date of the tenancy was noted as March 11, 2021 on the Notice.

The parties acknowledged that the Tenant did not pay any rent for February 2021 and has not paid any rent up to the date of the hearing, with the exception of \$500.00 that was paid on May 8, 2021. As such, the rental arrears are as follows:

- February 2021: \$1,600.00
- March 2021: \$1,600.00
- April 2021: \$1,600.00
- May 2021: \$1,100.00
- June 2021: \$1,600.00
- Total rent in arrears: **\$7,500.00**

In addition to an Order of Possession and a Monetary Order for unpaid rent, the Landlord is also seeking a monetary award for the outstanding utilities in the amount of **\$1,041.42**. The Tenant confirmed that he owed the utilities in this amount.

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 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. As well, should the Tenant not pay the utilities, this same Section of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities only after a written demand for the utilities is served on the Tenant, and this amount has remained unpaid 30 days after the written demand.

Once this Notice is received, the Tenant would have five days to pay the rent and/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 likely received the Notice on or around March 2, 2021. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent and/or utilities 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 received the Notice on or around March 2, 2021, he must have paid the rent in full by March 7, 2021 or disputed the Notice by Monday March 8, 2021 at the latest. While the Tenant disputed the Notice within the five-day time frame, the Tenant acknowledged that he did not have a valid reason under the *Act* for withholding the rent. Given that the Tenant did not have authorization from the Landlord, or a valid reason under the *Act*, to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice for unpaid rent 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 and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find

that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

With respect to the unpaid utilities, as there was no evidence of a demand letter that was served 30 days prior to service of the Notice, I am not satisfied that Notice is valid for unpaid utilities. Nevertheless, as the tenancy was ended for unpaid rent, this is a moot point.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenant is in arrears for the rent, I grant the Landlord a monetary award in the amount of **\$7,500.00**. In addition, as the parties agreed that utilities were owed in the amount of **\$1,041.42**, I grant this monetary award as well.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee. 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 claims.

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 February 2021	\$1,600.00
Rental arrears for March 2021	\$1,600.00
Rental arrears for April 2021	\$1,600.00
Rental arrears for May 2021	\$1,100.00
Rental arrears for June 2021	\$1,600.00
Utilities	\$1,041.42
Filing fee	\$100.00
Security deposit	-\$800.00
Total Monetary Award	\$7,841.42

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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 **\$7,841.42** 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: June 14, 2021

Residential Tenancy Branch