



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

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 landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent 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 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord AK 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 AK and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on March 17, 2021, and an amendment package on May 19, 2021. The landlord provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the Application, amendment, and evidence five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice on February 3, 2021, by the 10 Day Notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, the 10 Day Notice I find the 10 Day Notice deemed served on February 6, 2021, three days after its posting.

Although the landlords had applied for a monetary Order of \$5,400.00 as reflected in the last amendment filed on May 13, 2021, the tenant has failed to pay rent for the month of June 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. On this basis, I have accepted the landlords' request to amend their application to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on October 1, 2020, with monthly rent set at \$1,350.00, payable on the first of the month. The landlords collected a security deposit in the amount of \$675.00, which the landlord still holds.

The landlords served the tenant with a 10 Day Notice for unpaid rent as the tenant failed to pay the outstanding rent for January and February 2021. The landlord testified that since the 10 Day Notice was served, the tenant has only made one rent payment on March 3, 2021 in the amount of \$1,350.00. The landlord testified that the tenant now owes \$6,750.00 in outstanding rent for this tenancy.

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

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 February 16, 2021, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 16, 2021. 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 landlords are 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 landlords provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$6,750.00 for this tenancy. Therefore, I find that the landlords are entitled to \$6,750.00 in outstanding rent for this tenancy.

The landlords continues to hold the tenant's security deposit of \$675.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlords were successful in their application, I find that the landlords are entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlords 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 \$6,175.00 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
Outstanding Rent	\$6,750.00

Recovery of Filing Fee for this Application	100.00
Security Deposit	-675.00
Total Monetary Order	\$6,175.00

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 15, 2021

Residential Tenancy Branch