



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On March 8, 2021, the Landlords 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 11:00 AM on June 15, 2021.

The Landlords attended the hearing; however, the Tenant did not attend at any point during the 16-minute teleconference. At the outset of the hearing, I advised the Landlords that recording of the hearing was prohibited. They were reminded to refrain from doing so and they acknowledged this term. All parties in attendance provided a solemn affirmation.

They advised that they served the Notice of Hearing package and some evidence to the Tenant by hand on March 13, 2021. They submitted a signed proof of service form to corroborate service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlords’ Notice of Hearing package and some evidence.

They also advised that they served additional evidence to the Tenant by hand on June 14, 2021. As this evidence was served late and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this late evidence was excluded and not considered when rendering this Decision. However, I have accepted the Landlords’ evidence that was served with the Notice of Hearing package, and this 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

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords 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.

The Landlords advised that the tenancy started on October 1, 2020, that rent was established at an amount of \$1,500.00 per month, and that it was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They testified that the Notice was served to the Tenant on February 11, 2021 by hand, and they provided a signed proof of service form to confirm service. The Notice indicated that \$2,600.00 was owing on February 1, 2021 and that the effective end date of the tenancy was February 24, 2021.

They submitted that the Tenant only paid \$400.00 for December 2020 rent and she did not pay any rent for February 2021, thus the Notice was served. In addition, they advised that the Tenant has not paid any rent since service of the Notice. The Tenant is in arrears as follows:

- December 2020: \$1,100.00
- February 2021: \$1,500.00
- March 2021: \$1,500.00
- April 2021: \$1,500.00
- May 2021: \$1,500.00

- June 2021: \$1,500.00
- Total rent in arrears: **\$8,600.00**

In addition to an Order of Possession for unpaid rent, the Landlords are also seeking a Monetary Order in the amount of **\$8,600.00**, which includes December 2020 rental arrears to June 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 Landlords comply 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 Landlords 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 Landlords must be signed and dated by the Landlords, 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 February 11, 2021 in person. 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 received the Notice on February 11, 2021, she must have paid the rent in full or disputed the Notice by February 16, 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 Landlords, 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 Landlords' 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 Landlords are 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 **\$8,600.00** for the outstanding rental arrears.

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

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

Calculation of Monetary Award Payable by the Tenant to the Landlords

Item	Amount
Rental arrears for December 2020	\$1,100.00
Rental arrears for February 2021	\$1,500.00
Rental arrears for March 2021	\$1,500.00
Rental arrears for April 2021	\$1,500.00
Rental arrears for May 2021	\$1,500.00
Rental arrears for June 2021	\$1,500.00
Filing Fee	\$100.00
Security deposit	-\$750.00
Total Monetary Award	\$7,950.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlords 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 Landlords are provided with a Monetary Order in the amount of **\$7,950.00** 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: June 15, 2021

Residential Tenancy Branch