



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

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The landlords applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:51 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlord GW (the landlord) and witnesses JW and KL attended the hearing and were given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord, his witnesses and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on March 05, 2021 and the notice of hearing and the interim decision on March 19, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on March 10, 2021 and the notice of hearing and the interim decision on March 24, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$1,400.00 in unpaid rent to include an additional \$5,600.00 for the unpaid rent of March, April, May and June 2021.

The increase in the landlords' monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule of Procedure 4.2 and section 64(3)(c) of the Act, I amend the landlords' monetary claim for unpaid rent to \$7,000.00.

Issues to be Decided

Are the landlords entitled to:

1. obtain an order of possession based on the Notice?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlord testified the tenancy started on December 01, 2020. Monthly rent is \$1,400.00 and is due on the first day of the month. At the outset of the tenancy the landlord collected and currently holds a security deposit of \$700.00. The tenancy agreement was submitted into evidence. The landlord affirmed the three named landlords in the tenancy agreement are the three named landlords in this application.

On February 02, 2021 the landlord served the tenant with the Notice by attaching it to the rental unit's door. The landlord submitted a copy of the February 02, 2021 Notice into evidence. The Notice indicates \$1,400.00 in unpaid rent due on February 01, 2021. The effective date is February 15, 2021.

A witnessed proof of service stating the Notice was attached to the tenant's door on February 02, 2021 was submitted into evidence.

The landlord stated the tenant did not pay rent and continues to occupy the rental unit.

A Direct Request Worksheet (RTB form 46) was provided. It indicates the tenant did not pay rent due on February 01, 2021 in the amount of \$1,400.00.

Analysis

The tenant is deemed served the Notice on February 05, 2021, three days after it was attached to the rental unit's door, in accordance with section 88(g) and 90(c) of the Act.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's uncontested testimony that the tenant must pay monthly rent of \$1,400.00 on the first day of the month and that the tenant is in arrears for \$7,000.00 for February, March, April, May and June 2021.

I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

The tenant has not disputed the Notice and is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, February 15, 2021.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlords to retain the \$700.00 security deposit.

In summary:

February, March, April, May and June 2021 rent (\$1,400.00 per month x 5)	\$7,000.00
Filing fee	\$100.00
Sub-total	\$7,100.00
Security deposit	-\$700.00
Monetary award	\$6,400.00

Conclusion

Pursuant to section 55(2)(b) of the Act, 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.

Pursuant to sections 26 and 72 of the Act, I authorize the landlords to retain the \$700.00 security deposit and grant the landlords a monetary order in the amount of \$6,400.00.

The landlords are provided with this order in the above terms and the tenant must be served with this order. 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 23, 2021

Residential Tenancy Branch