



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On June 8, 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 an Order to comply pursuant to Section 62 of the *Act*.

On June 11, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of 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*.

Both Landlords attended the hearing; however, the Tenant did not attend the hearing at any point during the 16-minute teleconference. At the outset of the hearing, I informed the Landlords 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 Landlords advised that their Notice of Hearing and evidence package was served to the Tenant by registered mail on June 19, 2021 (the registered mail tracking number is noted on the first page of this Decision). They stated that this package was not picked up despite them informing the Tenant of it, and it was eventually returned to sender.

Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received the Notice of Hearing and evidence package five days after it was mailed out. As such, I have accepted the Landlords’ evidence and will consider it when rendering this Decision.

They also advised that the Tenant never served them with her Notice of Hearing or evidence package, and they have not received anything from the Tenant at all.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

As the Tenant did not attend the hearing and did not serve the Notice of Hearing or evidence package to the Landlords, I dismiss her Application without leave to reapply.

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 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.

The Landlords advised that the tenancy started on April 1, 2021, that rent was established at an amount of \$1,200.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They submitted that the Notice was served by Landlord R.S., and witnessed by Landlord J.S., by posting it to the Tenant's door on June 2, 2021. They also included pictures to corroborate service. The Notice indicated that \$1,200.00 was owing for rent

on June 1, 2021. The effective end date of the tenancy was noted as June 14, 2021 on the Notice.

They advised that the Tenant simply did not pay any rent for June 2021 and that she was routinely late paying rent for previous months. They also stated that the Tenant did not pay any rent for overholding in July 2021. They referenced a screenshot, submitted as documentary evidence, of the bank account that they had been receiving electronic transfers for rent from the Tenant. This account was the only account they used with the Tenant, and this document demonstrated that the Tenant had not transferred them any money for June 2021 rent.

In addition to an Order of Possession, they are seeking a Monetary Order for unpaid rent in the amount of **\$1,200.00**.

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 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 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 clearly received the Notice as she disputed it on June 8, 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.”*

While it was not clear when the Tenant received the Notice, it was deemed to have been received on June 5, 2021. As such, she must have paid the rent in full or disputed the Notice by June 10, 2021 at the latest. While the Tenant disputed the Notice within the five-day time frame, the Tenant did not serve the Notice of Hearing package and did not attend this hearing. As such, her Application was dismissed in its entirety.

As the undisputed evidence is that the Tenant did not pay June 2021 rent and did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlords' 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 Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenant is in arrears for the rent, I grant the Landlords a monetary award in the amount of **\$1,200.00**.

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

Pursuant to Sections 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 June 2021	\$1,200.00
Filing fee	\$100.00
Total Monetary Award	\$1,300.00

Conclusion

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

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 **\$1,300.00** 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: July 16, 2021

Residential Tenancy Branch