



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

On June 8, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession 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 and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

F.T. attended the hearing as the agent/executrix for the Landlord and she advised that the Landlord unfortunately passed away recently. As such, the Style of Cause on the first page of this Decision has been amended accordingly. The Tenant did not attend the hearing at any point during the 33-minute teleconference. At the outset of the hearing, I informed F.T. that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term. As well, she provided a solemn affirmation.

She advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on July 12, 2021 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered and signed for by the Tenant. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been 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.

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 Landlord entitled to an Order of Possession?
- 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.

F.T. advised that the tenancy started on February 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 \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served by being posted to the Tenant's door on May 2, 2021, but it was then hand delivered to the Tenant that same day. She also included a signed proof of service form to corroborate service. The Notice indicated that \$2,400.00 was owing for March and April 2021 rent and was due on April 1, 2021. The effective end date of the tenancy was noted as May 15, 2021 on the Notice.

She advised that the Tenant had actually paid March 2021 rent, so when the Notice was served, she informed the Tenant that only the April 2021 rent of \$1,200.00 was in arrears. She stated that the Tenant paid her \$1,200.00 on May 1, 2021 and a receipt was provided to the Tenant indicating that May 2021 rent was paid, but April 2021 rent was still outstanding. This receipt was submitted as documentary evidence.

She stated that the Tenant has not paid any rent for April, June, July or August 2021 and in addition to an Order of Possession, she is seeking a Monetary Order for unpaid rent in the amount of **\$4,800.00**.

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 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. 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 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 was served the Notice on May 2, 2021. According to Section 46(4) of the *Act*, the Tenant then 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 Notice was served on May 2, 2021, she must have paid the rent in full or disputed the Notice by May 7, 2021 at the latest. While the Notice indicated that March 2021 rent was in arrears, I am satisfied that the Tenant was advised and aware that March rent was not actually outstanding. As the undisputed evidence is that the Tenant did not pay April 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 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.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenant is in arrears for the rent up until the date of the hearing, I grant the Landlord a monetary award in the amount of **\$4,800.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. F.T. advised that she did not want to have the security deposit applied to this debt. As a note of caution, she should ensure that she is familiar with Section 38 of the *Act* with respect to dealing with the deposit at the end of the tenancy.

Pursuant to Sections 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 April 2021	\$1,200.00
Rental arrears for June 2021	\$1,200.00
Rental arrears for July 2021	\$1,200.00
Rental arrears for August 2021	\$1,200.00
Filing fee	\$100.00
Total Monetary Award	\$4,900.00

Conclusion

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 **\$4,900.00** 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: August 12, 2021

Residential Tenancy Branch