



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR-DR, MNR-DR**

Introduction

On April 19, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request Proceeding.

I have been delegated authority under the *Act* to consider the landlord's application 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 11:00 a.m. and concluded at 11:35 p.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she served the tenant with the Notice of Dispute Resolution Proceedings (reconvened hearing) package at the tenant's residence by registered mail on April 21, 2021. The tracking number for the mailing is recorded on the cover page of this

decision. The landlord testified that subsequent to serving the Notice of Dispute Resolution Proceedings package upon the tenant, the tenant texted the landlord advising that she would advise the arbitrator that the landlord has refused to fix or replace a washing machine. I am satisfied the tenant has been served with the Notice of Dispute Resolution Proceedings package, and I deem the tenant served with the Notice of Dispute Resolution Proceedings package five days after it was mailed, pursuant to sections 89 and 90 of the *Act*, on April 26, 2021.

This hearing was conducted in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed evidence. The first of three fixed term tenancies with the tenant began on May 1, 2019, set to expire a year later. A security deposit of \$700.00 was collected from the tenant at this time. The second tenancy was set to end on July 30th, 2020. The third tenancy began on August 1, 2020 and was set to expire on April 30, 2021. A copy of the current tenancy agreement was provided as evidence. Rent of \$1,450.00 was due on the 4th day of each month.

The tenant failed to pay any rent on January 4, 2021. The tenant paid rent for February, 2021, but once again failed to make her March 2021 payment on March 4th. On March 6th, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("notice"). A copy of the notice was provided as evidence.

It is signed and dated by the landlord and provides an effective (move-out) date of March 16, 2021. The notice states the tenant failed to pay rent in the amount of \$2,900.00 that was due on 04/01/2021. Together with the notice, the landlord supplied an additional note that states the tenant failed to pay January and March rent, while February's rent was paid. Total amount of unpaid rent is \$2,900.00. The landlord testified that the notice contained an error in that the due date for the rent should have been March 4, 2021, not April 1, 2021.

The landlord testified that she personally served the tenant with the notice on March 6, 2021. The landlord testified that the tenant threw the notice on the ground when the

landlord told her what it was. The service of the notice was witnessed by her husband, SH. At the hearing, SPH provided affirmed testimony stating he witnessed the landlord personally serve the tenant.

The landlord testified that, subsequent to serving the notice, the tenant didn't pay arrears in rent as shown in the notice, however the tenant paid May and June rent, with an additional \$500.00 payment towards arrears on May 3rd. Each payment was made by e-transfer and that she advised the tenant that the payments made were for occupancy only. The landlord testified that she sent several texts to the tenant (not in English) stating the tenancy agreement ended in April and that the tenant is required to vacate the unit.

Analysis

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - a. pay the overdue rent, in which case the notice has no effect, or
 - b. dispute the notice by making an application for dispute resolution.
- (5) 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
 - a. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - b. must vacate the rental unit to which the notice relates by that date.

Based on the undisputed testimony of the landlord and the witness, I am satisfied the tenant was duly served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 6, 2021 in accordance with sections 88 and 90 of the *Act*. Therefore, the tenant is conclusively presumed to have accepted the tenancy ended on March 16, 2021, the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the *Act*.

Section 26 of the *Act* is clear, 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. Based on the undisputed testimony of the landlord, I do not find the tenant had any right to deduct any portion of the rent. The tenant failed to pay rent as stated in the notices to end tenancy for the months of January and March in the amount of \$1,450.00 per month.

As the tenant continues to occupy the rental unit after the tenancy ended, the tenant is considered to be an overholding tenant as defined by section 57 of the *Act*. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the *Act* I find it reasonable to grant the landlord's application to amend the Application for Dispute Resolution to include rent for the timeframe the overholding tenant was occupying the rental unit.

I accept the landlord's testimony that the tenant paid rent for the months of May and June with an additional \$500.00 payment towards arrears made on May 3rd. No rent was paid for July or August. August's rent is pro-rated to the date of this hearing. [$\$1,450.00 / 31 \text{ (days)} \times 9 \text{ (days)} = \420.97]. As such, I award the landlord the following amounts:

Item	amount
January rent	\$1,450.00
February rent	(paid)
March rent	\$1,450.00
April rent	\$1,450.00
May rent	(paid)
Additional payment in May	(\$500.00)
June rent	(paid)
July rent	\$1,450.00
August rent	\$420.97
Total	\$5,720.97

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the sum of **\$5,820.97**, including filing fees.

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 09, 2021

Residential Tenancy Branch