



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, FFT
 OPC, MNRL-S, FFL, OPR
 CNR
 MNR-DR, OPR-DR, FFL

Introduction

This hearing convened as a result of four Applications. In the Tenants' Application for Dispute Resolution, filed on April 12, 2021, they sought the following relief:

- to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice");
- more time to make such an Application; and,
- recovery of the filing fee paid for the Application.

In the Landlord's Application filed on April 23, 2021, the Landlord sought the following:

- an Order of Possession based on the 1 Month Notice;
- monetary compensation for unpaid rent and utilities;
- authority to retain the Tenants' security deposit;
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 11, 2021 (the "June 11 Notice"); and,
- recovery of the filing fee.

In the Tenants' Application filed on June 2, 2021, the Tenants sought to cancel the June 11 Notice.

In the Landlord's Application filed on June 22, 2021, the Landlord sought the following:

- an Order of Possession and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 16, 2021 (the “June 16 Day Notice”); and,
- recovery of the filing fee.

The matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Landlord.

The Tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:38 a.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 affirmed testimony, to make submissions and to call witnesses.

Analysis of Tenants’ Applications

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenants did not attend the hearing, and the Landlord appeared and was ready to proceed, I dismiss the Tenants’ claim without leave to reapply. This includes dismissing their request that I cancel the 1 Month Notice and the June 11 10 Day Notice.

Section 55 of the *Act* reads as follows.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Although section 55 of the *Act* allows me to grant an Order of Possession in such circumstances, I must be satisfied the notices comply with section 52 of the *Act*. Notably the 1 Month Notice was not dated such that it does not comply and I am therefore not able to grant an Order of Possession based on the 1 Month Notice.

I have reviewed the June 11 Notice and confirm that it complies with section 52 of the *Act*. Consequently, and as I have dismissed the Tenants' claims, the Landlord is entitled to an Order of Possession effective two days after service.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord stated that the tenancy began May 24, 2020. The Tenants were obligated to pay rent in the amount of \$2,100.00 and paid a security deposit of \$1,050.00. The Landlord testified that the rent was initially payable on the last day of the month, but by agreement was switched to the 15th of each month preceding the month for which rent is payable. Documentary evidence filed by the Landlord confirms this testimony.

The Landlord testified that the Tenants paid rent for March 2021 and then failed to pay any rent since; as such the Tenants are in arrears in the amount of \$9,450.00 for the following months:

Rental period	Rent Owning
May 1- May 14, 2021	\$1,050.00
May 15 to June 14, 2021	\$2,100.00
June 15 to July 14, 2021	\$2,100.00
July 15 to August 14, 2021	\$2,100.00
August 15- September 14, 2021	\$2,100.00
TOTAL	\$9,450.00

The Landlord testified that the Tenants also failed to pay the utilities in the amount of \$655.00. In the claim before me the Landlord requested an Order that the Tenants compensate the Landlord for unpaid utilities.

The Landlord personally served the June 16 Day Notice on the Tenant C.D., on June 16, 2021; the Landlord. The Landlord confirmed that the service was witnessed by O.A., who took photos and videos of the service on the Tenants; a copy of the Proof of service was provided in evidence before me. At that time, the sum owing was \$5,250.00 as of June 16, 2021. The Landlord confirmed the Tenants failed to pay the outstanding rent after service of the June 16 Notice. As well, although the Tenants applied to dispute the Notice they failed to attend the hearing.

The Landlord sought recovery of the filing fee paid for both applications filed.

Analysis

After consideration of the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* provides that a tenant must pay rent when rent is due. I accept the Landlord's testimony that the Tenants were obligated to pay rent in the amount of \$2,100.00 per month. I also accept the Landlord's undisputed testimony that the Tenants failed to pay the full amount of rent for May 2021 and then failed to pay rent for any time following. The Landlord is entitled to monetary compensation in the amount of **\$9,450.00** for unpaid rent and I therefore grant their request in this respect.

I also accept the Landlord's testimony and evidence that the Tenants failed to pay their utilities as required such that at the time of the hearing **\$655.00** was outstanding. The Landlord is entitled to monetary compensation from the Tenants in this amount.

As the Landlord has been successful in their two applications, I award them recovery of the \$100.00 filing fee for both, for a total award of **\$200.00**.

Conclusion

The Tenants failed to call into the hearing; as such their Applications are dismissed without leave to reapply.

The Landlord is entitled to an Order of Possession pursuant to sections 46, 52 and 55 of the *Act*. This Order is effective two days after service on the Tenants. The Tenants are reminded that any costs the Landlord incurs to enforce the Order of Possession will be recoverable from the Tenants should they fail to move out of the rental unit as Ordered.

The Landlord is entitled to monetary compensation from the Tenants for the following:

Rent owing for May 1- May 14, 2021	\$1,050.00
Rent owing for May 15 to June 14, 2021	\$2,100.00
Rent owing for June 15 to July 14, 2021	\$2,100.00
Rent owing for July 15 to August 14, 2021	\$2,100.00
Rent owing for August 15- September 14, 2021	\$2,100.00
Outstanding utilities	\$655.00
Filing fee for April 23, 2021 Application	\$100.00
Filing fee for June 22, 2021 Application	\$100.00
TOTAL AWARDED	\$10,305.00

The Landlord is authorized to retain the Tenants' security deposit towards the amounts awarded and is granted a Monetary Order for the balance due in the amount of **\$9,255.00**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 20, 2021

Residential Tenancy Branch