



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, OPR, MNDL-S, MNRL-S, MNDCL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- an order of possession, further to having received a tenant's Notice to End the Tenancy;
- an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated June 2, 2021; ("10 Day Notice");
- a monetary order for damages for the Landlord of \$300.00;
- a monetary order for unpaid rent in the amount of \$50.00; and
- a monetary order for damage or compensation for damage under the Act of \$350.00, retaining the security deposit for these monetary claims.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Landlord testified that he served the Tenant with the Notice of Hearing documents by posting them on the rental unit door on April 30, 2021. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided his email address in the Application and he confirmed this address in the hearing. The Landlord also provided the Tenant's email address in the hearing, and he confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised Landlord that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised the Landlord that he is not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

The Landlord said that the amount of rent the Tenant owed when the Landlord applied for dispute resolution no longer reflects the amount owed by the Tenant to the Landlord. The Landlord said the Application does not include rent for the Tenant's room for May through August 2021, and for a second room in July 2021. The Landlord has requested that his claim be increased to reflect the Tenant's ongoing failure to pay rent while living in the residential property.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid; and therefore, he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after updating the Landlord's original amount claimed, I find it reasonable to amend the amount of compensation sought by the Landlord from the Tenant from \$700.00 to \$4,866.00.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Landlord submitted a copy of the Parties' tenancy agreement, and he confirmed the following details of the tenancy in the hearing. The fixed-term tenancy began on November 18, 2020 and was to run to June 30, 2021. The Tenant owes the Landlord a monthly rent of \$900.00, due on the first day of each month. The Landlord confirmed that the Tenant paid him a security deposit of \$450.00, and a pet damage deposit of \$450.00.

The Landlord submitted a copy of the 10 Day Notice, which was signed and dated June 2, 2021, it has the rental unit address, it was served by posting it on the rental unit door on June 2, 2021, and it has an effective vacancy date of June 17, 2021.

In the hearing, the Landlord said that the Tenant has not paid him any rent since April 2021. The Landlord also said that the Tenant broke into another tenant – "Herman's" room - and that the Tenant allowed another person to stay in that room without the Landlord's permission and without paying any rent for the room.

The Landlord directed me to emails he sent the Tenant, which set out what the Tenant owes the Landlord, as of certain dates. The Landlord sent the following email to the Tenant dated June 20, 2021:

Hi
[Tenant]
Here is total you owe me as of today. \$900.00 rent for 1 june to June 31 for room (room # 01)
\$900 rental for 1 june to June 31 for other room (room # 02) taken/occupied from Herman from Herman room # 02 Herman room occupied by you since 15 may-2021
\$450.00 previous rent for may 15 2021 to may 31 2021
\$76 owed on utilities as of 01 june 2021 so
\$900 + \$900 + \$450 + \$76 for utilities = \$2,326.00 - \$160.00 which you gave me on 15 – June – 2015 = \$2,166 (of this \$76 is owed for hydro charge till 01-may-2021) as of today 20-june-2021
Please pay \$2,166.00 right away date 20 – June-2021 (todays date) due today (+ new hydro bill from 01 may 2021 to till calculated money owed \$\$\$\$ when I give you new hydro bill)
Please pay \$2,166.00 now

Also what ever you did since 15-may-2021 by occupying room #02 Herman ['s room] without me authorising nothing and not paying damage deposit if you plan on renting the room # 02 from may 15-2021 to June – 30-2021 I need ot approve it & we need ot sing rental agreement what you did is 100% illegal you cannot just take the other room # 02 occupied by you since may 15-2021 by kicking Herman out, you need to pay \$450.00 damage deposit) + the property must be vacated / you got to move out by 30/ June-2021 by 12.00 noon on 30-june-2021 fixed term lease is expiring on 30-June-2021.

From

[Landlord]

Date: 20 June-2021

time 12:10 pm

[reproduced as written]

The Landlord said the Tenant did not pay or do anything about this June 20, 2021 email. Further, the Landlord submitted the following email dated August 4, 2021:

Hi [Tenant] as of 4 August this is what you owe me \$2,166.00 till June 20 – 2021 + July \$900 for room 1 bedroom you occupy + \$900 for the 2 bedroom you have illegally occupied till 31 july + \$900 rent from 1 August 2021 to 31-August-2021 = \$2,166 previously owed + \$900+\$900+\$900 (RENT FROM 1 August 2021 to 32-August -2021) = \$4866 as on 1 August 2021 your lease is over long time need to leave ASAP + pay me \$4,866

[Landlord]

04 – August – 2021 .

[reproduced as written]

Based on these emails and the Landlord's testimony in the hearing, I find the Landlord's monetary claim to be as follows:

MONTH	AMOUNT	REASON	TOTAL
May/21	\$900.00	Rent for Room # 01	\$900.00
May/21	\$450.00	Rent for Room # 02	\$450.00
June/21	\$900.00	Rent for Room # 01	\$900.00
June/21	\$76.00	Utilities owing	\$76.00
		Sub-total	\$2,326.00

		Utilities paid by Tenant	(\$160.00)
		Sub-total	\$2,166.00
July/21	\$900.00	Rent for Room # 01	\$900.00
July/21	\$900.00	Rent for Room # 02	\$900.00
Aug/21	\$900.00	Rent for Room # 01	\$900.00
		TOTAL	\$4,866.00

The Tenant did not attend the hearing to testify, nor did he submit any evidence to the RTB in response to the Landlord's Application and documentary submissions.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Based on the undisputed evidence before me, and pursuant to sections 26 and 67 of the Act, I award the Landlord with **\$4,866.00** in recovery of the unpaid rent and utilities from the Tenant.

Further, section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receiving a 10 Day Notice to pay the overdue rent owing or to dispute the 10 Day Notice by applying for dispute resolution. Pursuant to section 46 (5) of the Act, a tenant's failure to pay the overdue rent or to dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant was deemed served with the 10 Day Notice on June 5, 2021, three days after it was posted on the door on June 2, 2021. Therefore, pursuant to section 46 of the Act, the Tenant had until June 10, 2021, to pay the rent in full or to dispute the 10 Day Notice by applying to the RTB for dispute resolution. I find that overdue rent has not been paid and that rent of \$4,866.00 remains in arrears.

As there is no evidence before me that the Tenant disputed the 10 Day Notice nor paid his outstanding rent, I find that he is conclusively presumed under section 46 (5) of the Act to have accepted the 10 Day Notice. I, therefore, find that the tenancy ended on June 17, 2021. As a result, I find that the Tenant is overholding the rental unit, and therefore, that the Landlord is entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act.

As the effective date has passed and the Landlord testified that rent for August has not been paid, I grant the Landlord an **Order of Possession effective two days after service on the Tenant**.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$450.00 security deposit and his \$450.00 pet damage deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's \$900.00 security and pet damage deposits in partial satisfaction of the monetary award.

I, therefore, grant the Landlord a Monetary Order of **\$3,966.00** from the Tenant for the remainder of the award outstanding. This Order must be served on the Tenant by the Landlord and may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The Landlord is successful in his Application, as he provided sufficient evidence to establish his claims on a balance of probabilities. Further, the Tenant failed to dispute the Landlord's 10 Day Notice, and pursuant to section 46 (5), he is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Further, the Landlord is awarded \$4,866.00, pursuant to sections 26 and 67 of the Act, as he provided sufficient, undisputed evidence to establish that the Tenant failed to pay this amount of unpaid rent and utilities from May through August 2021. The Landlord is authorized to retain the Tenant's **\$450.00** security deposit and his **\$450.00** pet damage deposit in partial satisfaction of this award.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order of **\$3,966.00** for the remaining amount of the monetary award owed by the Tenant to the Landlord. The Landlord is provided with this Order 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 final and binding on the Parties, unless otherwise provided under the Act, and 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 27, 2021

Residential Tenancy Branch