



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR-DR, MNR-DR

Introduction

This hearing original convened as a direction request proceeding. In an Interim Decision dated May 21, 2021 a participatory hearing was ordered. This decision should be read in conjunction with the May 21, 2021 Interim Decision. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord and tenant E.L. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and orders.

The May 21, 2021 Interim Decision states:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.

The landlord testified that the tenants were each individually served with the above documents via registered mail. Registered mail receipts dated May 28, 2021 for each tenant were entered into evidence. Tenant E.L. testified that he received the above documents from the landlord via registered mail but did not recall on what date. I find that tenant E.L. and tenant M.R. were deemed served with the above documents on June 2, 2021, five days after they were mailed, in accordance with sections 88, 89 and 90 of the *Act*.

Preliminary Issue- Amendment

The landlord filed an amendment seeking to increase the monetary claim for unpaid rent. The landlord testified that since filing this application for dispute resolution the amount of unpaid rent owing has increased by \$7,000.00. The landlord testified that he served tenant M.R. with the amendment via registered mail. The landlord entered into evidence the registered mail receipt dated September 3, 2021. I find that tenant M.R. was deemed served with the amendment on September 8, 2021, five days after its mailing, in accordance with sections 88, 89 and 90 of the *Act*.

The landlord testified that tenant E.L. was not served with the amendment because he moved out on August 1, 2021. Tenant E.L. testified that he moved out on August 1, 2021. The landlord and tenant E.L. testified that tenant M.R. is still residing in the subject rental property.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$19,200.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenants has increased to \$26,200.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by tenant E.L. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, even though tenant E.L. was not served with the amendment, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$26,200.00.

Tenant E.L. confirmed the spelling of his last name in the hearing. The landlord's application for dispute resolution mis-spelled tenant E.L.'s last name. Pursuant to section 64 of the *Act*, I amend the landlord's application for dispute resolution to correctly spell tenant E.L.'s last name.

The address of the subject rental property in the landlord's application for dispute resolution lacks the suffix "street". Both parties agree that the address of the subject rental property is a street and not another suffix such as an avenue or lane. Pursuant to section 64 of the *Act* I amend the landlord's application for dispute resolution to include the suffix "street" to the address of the subject rental property.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 3, 2015 and is currently ongoing. Monthly rent in the amount of \$2,000.00 is payable on the first day of

each month. A security deposit of \$1,000.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Tenant E.L. testified that he and his wife separated 14 years ago; however, they continued to reside in the subject rental property together. Tenant E.L. testified that he and his wife had an agreement that he would pay \$1,200.00 of the monthly rent to the landlord and tenant M.R. would pay \$800.00 per month. The landlord testified that rent was paid in full for the first few years of the tenancy, but that from June 2019 onwards, tenant M.R. stopped paying her \$800.00 per month. The landlord testified that the tenants were \$800.00 short on their rent from June 2019 to April 2021, for a total outstanding amount of \$19,200.00. The landlord testified that tenant E.L. paid \$1,000.00 each month from May to July 2021 and that the amount outstanding for those months is \$3,000.00. The landlord testified that no rent has been paid from August to September 2021 and that \$4,000.00 is owed for those months.

Tenant E.L. testified that he didn't know from the beginning that tenant M.R. was not paying her portion of rent because they have been separated for 14 years. Tenant E.L. testified that tenant M.R. owes the landlord a lot of money and he has pushed her to pay but he cannot do much because they "don't speak much".

The landlord testified that he personally served tenant E.L. with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") sometime in April or May of 2021 but could not recall when. Tenant E.L. testified that he personally received the 10 Day Notice sometime in April or May of 2021. The 10 Day Notice is dated April 10, 2021 and states that the tenants failed to pay rent in the amount of \$19,200.00. The 10 Day Notice states that the effective date of the 10 Day Notice is April 10, 2021.

The landlord entered into evidence a proof of service document for the 10 Day Notice which states on page 1 that he hand delivered the 10 Day Notice to tenant E.L. on April 10, 2021. On page 2 of the proof of service document the tenant signed that he received the document by hand on April 14, 2021. Page 2 also contains a witness statement that tenant E.L. received the 10 Day Notice from the landlord on April 14, 2021.

The tenants did not file an application with the Residential Tenancy Branch to cancel the 10 Day Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenant. Based on the proof of service document, I find, on a balance of probabilities, that the 10 Day Notice was personally served on April 14, 2021. I base this on the tenant's signature of receipt on that date and the witness signature confirming that tenant E.L. received the 10 Day Notice on that date.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is April 24, 2021. I find that the corrected effective date of the 10 Day Notice is April 24, 2021.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

The landlord testified that the tenant was \$800.00 per month short on rent from June 2019 to April 2021 and is claiming \$19,200.00 in unpaid rent. June 2019 to April 2021 is 23 months. $23 * \$800.00 = \$18,400.00$. I accept the landlord's undisputed testimony that rent from June 2019 to April 2021 was \$800.00 short per month. I find on a balance of probabilities, that the claim for \$19,200.00 for this period is a math error on the part of the landlord and that only \$18,400.00 in unpaid rent from June 2019 to April 2021 is due. I find the tenants breached section 26(1) of the *Act* by failing to pay the entire rent when it was due. I find that the landlord is entitled to a monetary award of \$18,400.00 for unpaid rent from June 2019 to April 2021.

Based on the undisputed testimony of the landlord and the supporting testimony of tenant E.L., I find that rent from May 2021 to July 2021 was \$1,000.00 short per month. I find the tenants breached section 26(1) of the *Act* by failing to pay the entire rent when it was due. I find that the landlord is entitled to a monetary award of \$3,000.00 for unpaid rent from May 2021 to July 2021.

Based on the undisputed testimony of the landlord and the supporting testimony of tenant E.L., I find that rent from August 2021 to September 2021 was not paid. I find the tenants breached section 26(1) of the *Act* by failing to pay the entire rent when it was due. I find that the landlord is entitled to a monetary award of \$4,000.00 for unpaid rent from August to September 2021.

I note that Residential Tenancy Branch Policy Guideline #13 (PG #13) states:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due....

In a dispute between Susan and John occurs over debts or damages related to their co-tenancy, the two would have to resolve the matter outside of the Residential Tenancy Branch. Disputes between co-tenants are not within the jurisdiction of the RTA nor the MHPTA and cannot be resolved through the Branch.

The tenants both signed the tenancy agreement as tenants. Based on the tenancy agreement, I find that the tenants are co-tenants and are jointly and severally responsible for payment of rent to the landlord, regardless of any agreement between the tenants as to the amount each person is responsible for.

I find that while E.L. has moved out, he is still bound by the terms of the tenancy agreement to which he is a party and the obligation to pay rent on the first day of each

month. I find that both tenants are responsible for the full payment of rent and that the landlord was entitled to serve the tenants with the 10 Day Notice for failure to pay rent in full.

Based on the testimony of the landlord and tenant E.L., I find that the tenants failed pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants did not file an application to cancel the 10 Day Notice, pursuant to section 46(4) of the *Act*, within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by May 24, 2021, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent from June 2019 to April 2021	\$18,400.00
Unpaid rent from May 2021 to July 2021	\$3,000.00
Unpaid rent from August 2021 to September 2021	\$4,000.00
Filing Fee	\$100.00
TOTAL	\$25,500.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 20, 2021

Residential Tenancy Branch