



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL, FFL

Introduction

On May 26, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit, a Monetary Order for unpaid rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, his interpreter and a witness attended the conference call hearing; however, the Tenant did not attend at any time during the 24-minute hearing. The Landlord testified that he personally served the Tenant with the Notice of Dispute Resolution Proceeding by hand delivering a copy to the Tenant at the rental unit on June 11, 2021. Witness HSC testified that he was present with the Landlord and observed the Landlord personally serve the Tenant the Notice of Dispute Resolution Proceedings package on June 11, 2021. As a result, I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a 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 Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

The Landlord provided affirmed testimony and supportive evidence regarding the following:

- There used to be a written tenancy agreement; however, since the transfer in ownership the agreement has been misplaced and the Landlord did not submit.
- The one-year fixed term tenancy began on August 15, 2020 with a monthly rent of \$1,150.00 due on the first of each month.
- The Landlord collected a security deposit in the amount of \$550.00.
- The Landlord submitted screenshots of the monthly e-transferred rent payments and the security deposit to support that the Tenant paid the security deposit and \$1,150.00 per month in rent (when they paid in full).
- The Tenant began deducting the cost of repairs from their monthly rent in November 2020, without the consent of the Landlord.
- In April of 2021, the Tenant only paid \$482.50 in rent, acknowledging that it was "Partial rent, minus ½ of the work done before November 2020".
- The Landlord personally served the 10 Day Notice for Unpaid Rent, dated April 8, 2021 (the "10 Day Notice), to the Tenant on April 8, 2021; in/co Witness HSC, who signed a Proof of Service.
- The Tenant only paid partial rent in May 2020.
- As of August 31, 2021, the Tenant is in rental arrears in the amount of \$3,883.50.
- The Landlord submitted a video recording and testified that the rental unit was in good condition at the start of the tenancy and that there were no repairs that were required or of which they consented to reimburse the Tenant.
- The Tenant is still living in the rental unit and the Landlord is requesting an Order of Possession.
- The Landlord is requesting a Monetary Order for the outstanding rent in the amount of \$3,883.50.

Analysis

Based on undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,150.00 by the first day of each month and that the Tenant has not been regularly paying the full amount of rent from November 2020 through to September 2021. As the Tenant is required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a

monetary claim in the amount of \$3,883.50 in outstanding rent. (the amount claimed by the Landlord).

Section 46 of the Act authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. The tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the tenant does not pay the rent or make an Application for Dispute Resolution, 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 by that date.

Section 90 of the Act specifies that a document that is personally served is deemed to be received on that day. I, therefore, find that the Tenant received the 10 Day Notice on April 8, 2021.

As the Tenant is deemed to have received the 10 Day Notice on April 8, 2021, the earliest effective date of the notice is April 18, 2021. I find that April 18, 2021 is the effective vacancy date, as indicated on the 10 Day Notice by the Landlord.

I have no evidence before me that the Tenant paid their rent or applied for Dispute Resolution, therefore, I find that the Tenant accepted that the tenancy has ended. For the above reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

The Landlord was successful with their Application and as such, is entitled to be reimbursed for the filing fee of \$100.00.

The Landlord has established a monetary claim, in the amount of \$3,983.50, which includes \$3,883.50 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$3,433.50

Item	Amount
Unpaid rent and utilities	\$3,883.50
Filing Fee	100.00
Total monetary claim	3,983.50
Minus Security Deposit	-550.00

Total Monetary Order	\$3,433.50
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Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$3,433.50. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: September 27, 2021

Residential Tenancy Branch