



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWM ALLIANCE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, CNR, MNRT, RP, LRE, RR, OLC, FFT (tenant)**
OPR-DR, MNR-DR, FFL (landlord)

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten Day Notice") pursuant to section 46;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent for the landlord's property manger, AJD, attended on behalf of the landlord ("the landlord").

Landlord's Name

The attending agent AJD explained that the landlord named by the tenant is the property manager for the landlord who is properly listed above. Further to the request of the landlord, the name of the landlord is accordingly amended throughout.

Attendance of Tenant

The tenant did not attend although I kept the teleconference line open from the scheduled time for the hearing for an additional 10 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

In the absence of any submissions or evidence, I order the tenant's application dismissed without leave to reapply.

Service of Notice of Hearing and Application for Dispute Resolution

The landlord provided affirmed testimony that they served the tenant with the required documents by sending them by registered mail on July 14, 2021 thereby effecting service 5 days later, that is, on July 14, 2021.

The landlord provided the Canada Post Tracking Number in support of service. Further to the landlord's evidence, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on July 19, 2021 pursuant to sections 89 and 90.

Amendment

The landlord requested an amendment to the landlord's application re request that the landlord be authorized to apply the security deposit of \$1,125.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit in this amount at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the security deposit be applied to any monetary award.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing.

The landlord submitted a copy of the lease and summarized the background of the tenancy between the landlord and the tenant:

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	February 1, 2019
Date of ending	Date unclear (September 2021, estimated)
Monthly rent payable on 1 st	\$2,250.00
Security deposit	\$ 1,125.00
Pet deposit	0
Forwarding address provided	no
Date of landlord Application	July 8, 2021

The tenant has not provided written authorization to the landlord to apply the deposit to outstanding rent.

The landlord testified as the arrears of rent claimed of \$2,271.00. The amount of rent is stated in the tenancy agreement.

The landlord testified the landlord posted the 10 Day Notice to the tenant's door on June 11, 2021 thereby effecting service under section 90 of the Act on June 13, 2021. The landlord submitted a copy of the Ten-Day Notice as evidence which is in the standard RTB form. The Notice states the arrears of rent are \$2,271.00.

The landlord submitted a Proof of Service document in the RTB form in support of the testimony regarding service.

The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated

effective vacancy date of June 21, 2021. The landlord testified the tenant did not pay the amount owing in full.

The tenant's application to cancel the Notice has been dismissed.

The landlord provided uncontradicted testimony the amount claimed remain unpaid and owing to the landlord.

The landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Rent outstanding	\$2,271.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,125.00)
TOTAL	\$3,496.00

The landlord also requested an Order of Possession as the tenant left belongings in the unit although he appears to have vacated.

Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I accept the landlord's testimony that the tenant was served with the Ten-Day Notice as testified and in accordance with the *Act*.

I accept the landlord's testimony and documentary evidence and find the tenant did not pay the overdue amount or dispute the Ten-Day Notice within the five-day period following service.

The tenant has not attended the arbitration. The tenant's claim has been dismissed. Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the

tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit by June 21, 2021.

Based on the uncontradicted testimony and documentary evidence of the landlord, I grant the landlord a Monetary Order pursuant to section 67 for outstanding rent as requested.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

I authorize the landlord to apply the security deposit to the award.

My award to the landlord is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$2,271.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,125.00)
TOTAL	\$1,246.00

In summary, I grant the landlord a Monetary Order for **\$1,246.00**

I grant the landlord an Order of Possession effective on 2 days notice.

Conclusion

I grant the landlord a Monetary Order for **\$1,246.00**.

The Order must be served on the tenant. If the tenant fails to comply, the landlord may file the Order with the Courts of British Columbia to be 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: October 21, 2021

Residential Tenancy Branch