



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on June 7, 2021 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

The hearing was scheduled for 11:00 AM on October 7, 2021 as a teleconference hearing. The Landlord appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Notice of Adjourned Hearing and documentary evidence package were served to the Tenant by registered mail on June 30, 2021. The Landlord provided the tracking information during the hearing in support. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the above-mentioned documents on July 5, 2021, the fifth day after their registered mailing.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy began on January 1, 2021. Rent in the amount of \$2,000.00 is due to be paid by the Tenant to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00, which the Landlord currently holds. The Landlord stated that the Tenant continues to occupy the rental unit.

The Landlord testified the Tenant only paid \$919.78 of the required \$2,000.00 on May 3, 2021 for May 2021 rent. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 11, 2021 (the "10 Day Notice") with an effective vacancy date of May 25, 2021. At that time, rent in the amount of \$1,080.20 was outstanding. The Landlord testified she served the 10 Day Notice to the Tenant by registered mail on May 11, 2021.

The Landlord stated that the Tenant did not pay any amount of rent towards the outstanding balance of rent shown on the 10 Day Notice. The Landlord stated that the Tenant paid rent when due for June and July 2021, however, has not paid any amount of rent for August, September and October 2021. As such, the Landlord is seeking a monetary order for unpaid rent in the amount of \$7,080.20 and an order of possession based on the unpaid rent. If successful, the Landlord is also seeking the return of the filing fee paid to make the Application.

The Landlord stated that the Tenant has also failed to pay utilities to the Landlord. During the hearing, the Landlord was notified that the 10 Day Notice does not indicate an amount of unpaid utilities. Furthermore, the Landlord did not amend their Application to include a claim for unpaid utilities. As such, I am unable to consider unpaid utilities in this decision. The Landlord is at liberty to reapply for compensation relating to the unpaid utilities.

Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the 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.

Section 46 of the Act states a Landlord may 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 Landlord served the Tenant with the 10 Day Notice by registered mail on May 11, 2021. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received 5 days later. I find the Tenant is deemed to have received the 10 Day Notice on May 16, 2021.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until May 21, 2021 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant has made no payments towards the amount of \$1,080.20 in unpaid rent. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, pursuant to section 46(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of **\$1,080.20** for unpaid rent for May 2021. Furthermore, I accept that the

Tenant has failed to pay rent for August, September, and October 2021 for a further **\$6,000.00** of rent owed to the Landlord. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$6,180.20, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$7,080.20
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$1,000.00</i>)
TOTAL:	\$6,180.20

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$6,180.20. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 07, 2021

Residential Tenancy Branch