



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNR-DR, OPR-DR, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for unpaid rent pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, SR, and Tenants, BB and CL, attended the hearing at the appointed date and time, and provided affirmed testimony.

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 were not recording this dispute resolution hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Dispute Resolution Service of this matter began via a Direct Request. On June 22, 2021, an Interim Decision was rendered ordering that this matter be reconvened in a participatory hearing to determine details of the Landlord's application. Notices of Reconvened Hearing and other materials were served on the Tenants on June 29, 2021 via Canada Post registered mail (the "Reconvened Hearing Notice"). The Landlord submitted Canada Post registered mail receipts with tracking numbers into documentary evidence as proof of service. I have noted the registered mail tracking numbers on the

cover sheet of this decision. The Tenants confirmed receipt of the Reconvened Hearing Notice. I find that the Tenants were deemed to have received the Reconvened Hearing Notice for this hearing five days after mailing them, on July 4, 2021, in accordance with Sections 89(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy began on January 15, 2021. Rent in the amount of \$4,700.00 was due payable on the first day of each month. The Landlord said the Tenants paid a security deposit of \$2,350.00, but they had not collected the pet damage deposit of \$2,350.00 yet. The Landlord said he did not have the paper documents in front of him at the hearing.

Tenant BB said the monthly rent was \$4,500.00, plus they were responsible for \$200.00 per month for utilities. Tenant BB also said they paid the security deposit of \$2,350.00, and the \$2,350.00 pet damage deposit at the beginning of their tenancy as they already had the pet.

The submitted tenancy agreement stipulated that the rent is \$4,700.00 per month, which includes services of water, electricity, heat, natural gas, sewage disposal, garbage collection and other recycling services, among other items in the house. The tenancy agreement also notes that the security deposit of \$2,350.00 and the pet damage deposit of \$2,350.00 was due on January 13, 2021. The tenancy agreement was signed by the Landlord on January 12, 2021, and by Tenant BB on January 13, 2021, and Tenant CL on January 14, 2021. The Landlord has never made an application to end the tenancy for unpaid security deposit or unpaid pet damage deposit.

The Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 20, 2021 by posting the notice on the Tenants' door (the "10 Day

Notice”). A picture of the 10 Day Notice posted on the door was submitted into evidence on June 1, 2021. The Landlord provided a Proof of Service document for the 10 Day Notice which was dated May 20, 2021. The Landlord in the hearing said the 10 Day Notice was served on July 6, 2021. I find this is a clerical error with respect to the Landlord’s evidence, as he testified that he did not seem to have all his documentary evidence in front of him at the hearing. The Tenants confirmed receipt of the 10 Day Notice near the end of May 2021. May 20, 2021 is in keeping with the date noted in the Proof of Service document submitted into evidence. I find that the 10 Day Notice was served according to Section 88(g) of the Act on May 20, 2021, and was deemed received on May 23, 2021 pursuant to Section 90(c) of the Act.

The Landlord submitted that rent payments have been late on multiple occasions. The Landlord said May’s rent was late, but after reviewing texts messages with Tenant BB, he determined he was eventually paid by June 1 or 2, 2021. Other rent payments made follow:

2021	Paid
May	\$4,700.00 by June 1 or 2
June	\$4,700.00
July	\$4,700.00
August	\$3,300.00
September	\$0.00
October	\$0.00

Tenant BB said he lived in Calgary and was not able to move into the home until February. Due to him being Covid-19 positive, he said this made him late with the rent in May. He said he paid the May and June rent at the same time.

Tenant BB said that him and Tenant AM are looking for alternative housing, but it is difficult in Vancouver as not many landlords accept pets. He said that Tenant CL has moved out. He also testified that there is friction between Tenants BB and AM, and the downstairs tenant, and since this began, Tenant BB and Tenant AM are looking for alternative housing. Because of the friction between them and the downstairs tenant, he felt this was a reason for them not to pay rent. In August, Tenant BB said that Tenant CL and Tenant AM felt their rights were not being respected and this was the reason why rent was not paid. The same reason was given for why September and October’s rent remain unpaid.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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 outlines how a tenancy can end for unpaid rent:

- 46 (1) 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.
- (2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].
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- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

The 10 Day Notice was deemed received on May 23, 2021. Pursuant to Section 46(4) of the Act, the Tenants had until May 28, 2021 to either pay the rent or apply for dispute resolution of the 10 Day Notice. I find that May's rent was paid June 1 or 2, 2021 which is beyond the 5 days that the Tenants had to pay the unpaid rent. The Tenants did not

apply for dispute resolution of the 10 Day Notice, therefore, according to Section 46(5)(a) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended.

I find that the 10 Day Notice complies in form and content pursuant to Section 52 of the Act, and as the tenancy is conclusively presumed to have ended, I find the Landlord is entitled to an Order of Possession.

I find the monthly rent for the rental unit is \$4,700.00 which included the costs of services to the home as set out in the submitted tenancy agreement. Tenant BB was clear about paying the pet damage deposit at the beginning of the tenancy as he said they already had a pet. The Landlord did not disclose that he has applied to end the tenancy for this alleged unpaid pet damage deposit. The Landlord also did not have his tenancy paperwork in front of him at the time of the hearing and the submitted and signed tenancy agreement sets out that both deposits were due on January 13, 2021. On a balance of probabilities, I find that the Landlord is mistaken and that the pet damage deposit was paid at the beginning of the tenancy by the Tenants.

I find that the amount of unpaid rent is \$10,800.00 as calculated below in the Monetary Award table. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit and the pet damage deposit held by the Landlord in partial satisfaction of the Monetary Award. The Landlord is successful in their dispute resolution claim; therefore, they are entitled to recovery of the application filing fee.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$6,200.00, which has been calculated as follows:

Monetary Award:

2021	Owing	Paid	Owing
May	\$4,700.00	\$4,700.00	\$0.00
June	\$4,700.00	\$4,700.00	\$0.00
July	\$4,700.00	\$4,700.00	\$0.00
August	\$4,700.00	\$3,300.00	\$1,400.00
September	\$4,700.00	\$0.00	\$4,700.00
October	\$4,700.00	\$0.00	\$4,700.00
TOTAL UNPAID RENT:			\$10,800.00
FILING FEE:			\$100.00
LESS SECURITY DEPOSIT AND PET DAMAGE DEPOSIT:			-\$4,700.00
TOTAL MONETARY AWARD:			\$6,200.00

Conclusion

The Landlord's Notice to End Tenancy is upheld, and I grant an Order of Possession to the Landlord effective two days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order of \$6,200.00 to the Landlord. 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 Act.

Dated: October 13, 2021

Residential Tenancy Branch