



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Broadstreet Properties Ltd and [tenant name
suppressed to protect privacy]

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 September 22, 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 Landlord's Agent A.L. and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Notice of Adjourned Hearing and the Landlord's documentary evidence, however, indicated that he did not receive the Notice to Direct Request. I find that the Tenant was sufficiently served with the Notice advising the Tenant of the adjourned hearing, the Landlord's claims and evidence in support of those claims, pursuant to Section 71 of the *Act*.

The parties were 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

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on September 1, 2021. Rent in the amount of \$1,898.00 is due to be paid to the Landlord on the first day of each month. Furthermore, the Tenant is required to pay parking if applicable in the amount of \$60.00 per month. The tenancy agreement also indicates that the Tenant is required to pay a \$25.00 late fee and \$25.00 NSF charge on late rent payments. The Tenant paid a security deposit in the amount of \$949.00 and a pet damage deposit in the amount of \$200.00, which the Landlord holds.

The Landlord's Agent testified the Tenant did not pay rent or parking fees when due in September 2021. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 7, 2021 (the "10 Day Notice") with an effective vacancy date of September 22, 2021. At that time, rent, parking, late fee, and NSF charge in the amount of \$2,008.00 was outstanding. The Landlord's Agent testified she served the 10 Day Notice to the Tenant by posting it to the Tenant's door on September 7, 2021. The Tenant confirmed receipt.

The Landlord's Agent stated that the Tenant made a payment of \$200.00 on October 13, 2021. The Landlord's Agent stated that the Tenant has made no further rent payments to the Landlord. The Landlord's Agent stated that the Tenant has failed to pay rent for October and November 2021. The Landlord's Agent stated that the Tenant did not require parking for October and November 2021. The Landlord's Agent stated that the Tenant incurred a late payment charge and NSF charge in both October and November 2021. The Landlord's Agent stated that currently, the Tenant owes \$5,671.00 to the Landlord.

The Tenant acknowledged that he failed to pay rent to the Landlord for September, October, and November 2021. The Tenant stated that a workplace injury has impacted his ability at paying rent. The Tenant stated that he feels as though he owes the

Landlord \$5,800.00 which consists of the unpaid rent, parking and late/NSF charges with additional compensation added for their troubles.

Analysis

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

Section 26 of the Act states that a Tenants 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 dated September 7, 2021 with an effective vacancy date of September 22, 2021, by posting it to the Tenant's door on September 7, 2021. The Tenant confirmed receipt on the same date.

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 September 12, 2021 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution. The Tenant did neither.

As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and did not dispute 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 accept that the Tenant feels as though he owes the Landlord \$5,800.00, however, the Landlord is only seeking \$5,671.00. I find the Landlord has established an entitlement to

a monetary award for unpaid rent in the amount of **\$5,671.00**. 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 and pet damage deposits 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 \$4,622.00, which has been calculated as follows:

Claim	Amount
Unpaid rent/parking/late/NSF Fee:	\$5,671.00
Filing fee:	\$100.00
<i>LESS security/pet deposits:</i>	<i>-(\$1,149.00)</i>
TOTAL:	\$4,622.00

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 \$4,622.00. 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: November 25, 2021

Residential Tenancy Branch