



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL-4M, MNRL-S, FFL**

Introduction

This hearing dealt with an application from the Landlords pursuant to the *Residential Tenancy Act* (the “Act”) for:

- an Order of Possession pursuant to sections 49 and 55;
- a monetary order for unpaid rent in the amount of \$312.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing scheduled for 11:00 am, although I left the teleconference hearing connection open for the entire hearing, which ended at 11:22 am, in order to enable the Tenant to call into this teleconference hearing. The Landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference.

The Landlords testified the Notice of Dispute Resolution Proceeding and some of their evidence (“NODR Package”) were served on the Tenant by registered mailing on July 23, 2021. The Landlords provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that NODP Package was served on the Tenant in accordance with section 89 of the Act.

The Landlords stated they served additional evidence for this application on the Tenant by registered mail on September 9, 2021. The Landlords provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this

decision. I find the additional evidence was served on the Tenant in accordance with section 88 of the Act.

The Landlords testified the Tenant had not served any evidence on them.

Preliminary Issue – Amendment of Landlord’s Monetary Claim

At the hearing the Landlords sought to amend their application to include a claim for the months of August to October 2021 (inclusive) for rental arrears which they testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the Landlords are seeking compensation for unpaid rent that has increased since they first applied for dispute resolution. I find that the increase in the Landlords’ monetary claim for August, September and October 2021 rent should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 4.2, I order that the Landlords’ application be amended to include a claim for August to October 2021 rent for a total of \$1,875.00.

Issue(s) to be Decided

Are the Landlords entitled to:

- an order of possession for Landlords’ use of the residential property pursuant to sections 49 and 55;
- a monetary order for unpaid rent in the amount of \$1,875.00.00; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The Landlords testified they entered into a written fixed term tenancy agreement with the Tenant starting April 30, 2018 and ending August 31, 2018. Monthly rent is \$625.00 and is payable on the 30th day of each month. The Tenant paid the Landlords a security deposit of \$312.00 which the Landlords still retain. The Landlords stated the Tenant has not vacated the rental unit.

The Landlords served the Tenant in-person and by email with a Four Month Notice to End Tenancy for Conversion of the Rental Unit dated February 16, 2021 ("4 Month Notice"). The 4 Month Notice specified an effective date of June 30, 2021. The Landlord submitted a copy of an email dated February 26, 2021 from the Tenant in which she asks whether the email version is the same as the documents served on her in-person. I find that the 4 Month Notice was served on of the Tenant in accordance with section 88 of the Act.

The Landlords testified they had purchased the residential premises from one of the Landlords' parents in January 2021. The Landlords stated that rental unit was located 30 metres from their home. They stated that they currently use their home for both a residence for their family and for an office to conduct their bee farm business. The Landlords testified that they recently had another child and, as a result, there were now 4 people living in their home. They stated that the conversion of the rental unit to an office had been a long-term plan to accommodate their growing family. They stated that, as they only needed to move office furnishings and equipment into the rental unit, it was unnecessary to obtain any permits to do so.

The Landlord testified that the Tenant told them that she has not paid the overdue rent because she wanted the Landlords to install an exhaust fan in the kitchen. The Landlords stated the Tenant had also told them she was not willing to move because she was unable to find other accommodations. The Landlords stated they were unaware of the Tenant making an application to dispute the 4 Month Notice.

The Landlords testified that the Tenant is in rental arrears as follows:

Date	Owed	Paid	Balance
01-Aug-21	\$625.00	\$0.00	\$625.00
01-Sep-21	\$625.00	\$0.00	\$1,250.00
01-Oct-21	\$625.00	\$0.00	\$1,875.00
Total	\$1,875.00	\$0.00	\$1,875.00

The Landlords have not yet provided the Tenant with an amount equal to one months' rent in accordance with section 51(1) of the Act.

Analysis

1. Order of Possession

Section 49 of the Act, in part, states:

Landlord's notice: landlord's use of property

- (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

...

- (f) convert the rental unit to a non-residential use.
- (7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.
- (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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 by that date.

[emphasis added in bold]

The undisputed testimony of the Landlords is they served the Tenant with the 4 Month Notice in person on February 16, 2021 pursuant to section 49(6) of the Act on the basis that they wanted to convert the rental unit into an office for their business. Pursuant to section 49(8)(b), the Tenant had until March 18, 2021 to file an application to dispute to the 4 Month Notice. There is no evidence the Tenant made an application to dispute the 4 Month Notice. The 4 Month Notice specified that Tenant was to vacate the rental unit by June 30, 2021. As of the date of this hearing, the Tenant has not vacated the rental unit.

I have reviewed the 4 Month Notice and find it complies with section 52 form and content requirements.

Therefore, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on June 30, 2021. As such, the Landlords are entitled to an Order of Possession pursuant to section 55 of the Act.

2. Monetary Claim

Section 26 of the Act states:

- 26 (1)** 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.

I find that monthly rent is \$625.00 and is due on the first of the month. I accept the Landlords' undisputed testimony the Tenant did not pay any rent for the months of August to October 2021. As the time of this hearing, November 2021 was not due (being due on November 30, 2021).

As such, I find that the Tenant is \$1,875.00 in total arrears for the months of August to October 2021. The Tenant must compensate the Landlords this amount. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlords \$1,875.00 in satisfaction of the arrears owed.

Subsections 51(1) and 51(1.1) of the Act provide:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Accordingly, the Tenant is permitted to have the last month free of rent pursuant to section 55(1.1) of the Act. As I have ordered the Tenant to pay the Landlord for the unpaid rent from August to October 2021, I find the Tenant is entitled to remain in the rental unit for the month of November 30, 2021 and is not required to pay any rent for this month. Based on the foregoing, I order that the Tenant provide the Landlords with vacant possession of the rental unit effective at 1:00 pm on November 30, 2021 after service of this Order on the Tenant.

As the Landlords have been successful in their application, they may recover their filing fee from the Tenant pursuant to section 72(1) of the Act.

Pursuant to section 72(2) of the Act, the Landlords may retain the security deposit in partial satisfaction of the monetary order made above.

Conclusion

Pursuant to section 67 of the Act, I order that the Tenant pay the Landlords \$1,663.00 representing the following:

Description	Amount
Rental Arrears (August to October 2021)	\$1,875.00
Security Deposit Credit	-\$312.00
Landlord's Filing Fee	\$100.00
Total	\$1,663.00

Pursuant to section 55 of the Act, the Landlord is provided with an Order of Possession effective at 1:00 pm on November 30, 2021. This Order must be served on the Landlords on the Tenant as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 9, 2021

Residential Tenancy Branch