



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, 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 to recover money for unpaid rent and to retain the Tenant's security deposit pursuant to Sections 38 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, HL, called in to attend this hearing for the Landlord. The Landlord's daughter, VN, also called in to attend this hearing for the Landlord. HL decided that VN would take the call for the Landlord and left the hearing. VN gave affirmed testimony at the hearing.

The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that VN and I were the only ones who had called into this teleconference.

VN was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (the "ROP") prohibits the recording of dispute resolution hearings. VN testified that she was not recording this dispute resolution hearing.

VN was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As only VN, for the Landlord, attended the hearing, I asked VN to confirm that the Notice of Dispute Resolution Proceeding for this hearing had been served on the Tenant (the "Notice"). VN stated that the Notice was served on the Tenant by registered mail on August 4, 2021. The Canada Post registered mail receipt with tracking number was submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was served with the documents for this hearing five days after mailing them, on August 9, 2021, in accordance with sections 89(1)(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 to recover money 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.

This periodic tenancy began on January 2, 2021. Monthly rent is \$800.00 payable on the last day of each month. A security deposit of \$400.00 was collected at the start of the tenancy.

The Landlord served a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by posting the form on the Tenant's door on May 31, 2021 (the "10 Day Notice"). The 10 Day Notice stated the reason why the Landlord was ending the tenancy was because the Tenant owed \$2,400.00 in outstanding rent. The effective date of the 10 Day Notice was June 10, 2021. The Landlord submitted photographic proof that the 10 Day Notice was posted on the Tenant's door. The last day the Tenant paid rent was February 28, 2021. VN testified that her father did not receive rent payments in March to June, 2021.

VN stated that her father mostly did not interact with the Tenant, or the Tenant was not at home. VN said her father thought the Tenant might have moved out after receiving the Notice from the Landlord. VN's father did not check on whether the Tenant still remained in the rental unit prior to leaving on vacation.

VN testified that the only person who can confirm whether the Tenant remains in the rental unit is the upstairs tenant. The last time the upstairs tenant saw the Tenant, VN testified, was the end of August or September, 2021. VN stated the only reason why her parents do not check on the rental unit was that the Tenant was a little aggressive to the Landlord.

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. As this hearing was conducted pursuant to ROP 7.3, in the Tenant's absence, all the Landlord's testimony is undisputed.

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].*
- ...
- (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 served on the Tenant by attaching a copy to the door on May 31, 2021. Pursuant to Section 90(c) of the Act, the 10 Day Notice was deemed received by the Tenant on June 3, 2021. In accordance with Section 46(2), I find that the 10 Day Notice complied in form and content pursuant to Section 52 of the Act. The Tenant did not pay the outstanding rent or make an application for dispute resolution to dispute the 10 Day Notice. In accordance with Section 46(5), the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

Section 55(2) of the Act sets out how an Order of Possession can be granted to the Landlord.

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

Pursuant to Section 55(2)(b), after the 10 Day Notice was served on the Tenant, the Tenant did not dispute the notice and the time for making that application has expired. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(a).

I find that the total amount of unpaid rent is \$2,400.00 as noted on the 10 Day Notice. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the Monetary Award. The Landlord is successful in his dispute resolution claim; therefore, he is entitled to recovery of the application filing fee.

Pursuant to Sections 55(4)(b) and 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$2,100.00, which has been calculated as follows:

Monetary Award:

	Rent	Paid	Owing
March	\$800.00	\$0.00	\$800.00
April	\$800.00	\$0.00	\$800.00
May	\$800.00	\$0.00	\$800.00
TOTAL UNPAID RENT:			\$2,400.00
FILING FEE:			\$100.00
LESS SECURITY DEPOSIT:			-\$400.00
TOTAL MONETARY AWARD:			\$2,100.00

Conclusion

As the tenancy has ended, I grant an Order of Possession to the Landlord effective two days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant 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 \$2,100.00 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: November 10, 2021

Residential Tenancy Branch