



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, OPB, MNRL-S

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied for:

- an order of possession, as the tenant signed a mutual agreement to end the tenancy, but did not vacate the rental unit;
- an order of possession, as the tenant did not vacate the rental unit at the end of the fixed term tenancy; and
- a monetary order for unpaid rent, noting that the Landlord holds the Tenant's security deposit.

The Landlord attended the hearing; the Tenant did not. The Landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified their assistant served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Tenant on September 20, 2021 by registered mail, and provided a Canada Post receipt and tracking number. In accordance with section 90 of the Act, I find the NDRP and evidence deemed received by the Tenant on September 25, 2021. I find the Landlord served the Tenant in accordance with section 89 of the Act.

Preliminary Matter

At the beginning of the hearing, the Landlord testified that the Tenant had vacated the rental unit on November 9, 2021. As the Landlord stated that they were no longer seeking an order of possession, I dismiss those parts of their claim. The remainder of this decision will address the Landlord's application for a monetary order for unpaid rent.

Issue to be Decided

Is the Landlord entitled to a monetary order for unpaid rent? If so, is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The Landlord confirmed the following particulars of the tenancy. It began on December 1, 2020; rent is \$2000.00, due on the first of the month; and the Tenant paid a security deposit of \$1000.000, which the Landlord still holds.

The Landlord testified the Tenant owed outstanding rent for May to November 2021, as follows:

Month (2021)	Rent due	Rent paid	Outstanding rent
May	\$2000.00	\$1000.00	\$1000.00
June	\$2000.00	\$0.00	\$2000.00
July	\$2000.00	\$0.00	\$2000.00
August	\$2000.00	\$0.00	\$2000.00
September	\$2000.00	\$0.00	\$2000.00
October	\$2000.00	\$0.00	\$2000.00
November	\$2000.00	\$0.00	\$2000.00
		Total	\$13,000.00

The Landlord submitted as evidence a copy of a Mutual Agreement to End a Tenancy, dated February 28, 2021 (the Mutual Agreement), signed by the Landlord and the Tenant, stating the tenancy agreement will end on March 21, 2021.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the Tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the evidence before me, and on a balance of probabilities, I make the following findings:

I find that the tenancy agreement required the Tenant to pay the Landlord rent of \$2000.00 on the first day of each month.

I find that that pursuant to section 44(1)(c) of the Act, the tenancy ended on March 21, 2021 as recorded on the signed Mutual Agreement.

I accept the Landlord's testimony that the Tenant did not vacate the rental unit until November 9, 2021.

I accept the Landlord's undisputed testimony that the Tenant failed to pay the Landlord \$11,000.00 for the months of May through October, 2021. There is no evidence before me that the tenant has a right under the Act to deduct all or a portion of the rent.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Section 57 states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Policy Guideline 3. *Claims for Rent and Damages for Loss of Rent* states:

A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA ... This includes compensation for the use and occupancy of the unit or site on a *per diem* basis until the landlord recovers possession of the premises.

As the tenancy ended on March 21, 2021, but the Tenant did not vacate the unit until November 9, 2021, they were overholding from March 22 to November 9, 2021.

Therefore, the overholding Tenant owes the Landlord compensation for use and occupancy, which is calculated on a *per diem* basis as follows:

Month/Days (2021)	Compensation due	Compensation paid	Outstanding Compensation
May	\$2000.00	\$1000.00	\$1000.00
June	\$2000.00	\$0.00	\$2000.00
July	\$2000.00	\$0.00	\$2000.00
August	\$2000.00	\$0.00	\$2000.00
September	\$2000.00	\$0.00	\$2000.00
October	\$2000.00	\$0.00	\$2000.00
November 1-9	\$600.00	\$0.00	\$600.00
		Total	\$11,600.00

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in their application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with sections 38 and 72 of the Act, I allow the Landlord to retain \$1000.00 of the Tenants' security deposit in partial satisfaction of the debt owed to the Landlord.

I find the Landlord is entitled to a monetary order for \$10,700.00. This accounts for the compensation owed for use and occupancy, the filing fee, and the Tenant's security deposit, as follows:

Compensation due, May to November, 2021	\$11,600.00
Filing fee	\$100.00
Tenant's security deposit	- \$1000.00
Total	\$10,700.00

Conclusion

The Landlord's application is granted.

The Landlord is granted a monetary order in the amount of \$10,700.00. The monetary order must be served on the Tenant. 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 23, 2021

Residential Tenancy Branch