



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served the Tenant a 10 Day Notice dated July 2, 2021; and for a monetary order of \$12,100.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of her Application filing fee.

The Tenant, F.S., the Landlord, A.C., and the co-landlord, J.Y., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said he had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Further, I asked the Parties to spell their names for me. The Tenant's name appeared in the wrong order in the Application, as the Tenant's first name starts with "F" and his middle name starts with "T", rather than the opposite, which was on the Application. Accordingly, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on April 1, 2021, and runs to March 31, 2022, and is then to operate on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$2,350.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,175.00, and no pet damage deposit.

I asked the Landlord why I should give her an order of possession, and she said because the Tenant has not paid rent since June 2021, and he did not pay all of June's rent owing, either. The Landlord and the Tenant confirmed in the hearing that the Tenant owes the Landlord the amounts set out in the following table.

Date Rent Due	Amount Owing	Amount Received	Date Received	Amount Owing
June 1, 2021	\$2,350.00	\$2,000.00	July 1	\$350.00
July 1	\$2,350.00	\$0.00	n/a	\$2,350.00
August 1	\$2,350.00	\$0.00	n/a	\$2,350.00
September 1	\$2,350.00	\$0.00	n/a	\$2,350.00

October 1	\$2,350.00	\$0.00	n/a	\$2,350.00
November 1	\$2,350.00	\$0.00	n/a	\$2,350.00
	TOTAL			\$12,100.00

Again, the Tenant acknowledged that due to employment issues during the pandemic, he was unable to pay his rent, as set out in the above table.

The Landlord submitted a copy of the 10 Day Notice, which she said she served to the Tenant. The 10 Day Notice was signed and dated July 2, 2021, and has the rental unit address. The Landlord said that on July 2, 2021, she served the Tenant the 10 Day Notice via email to the address the Tenant provided to her as his email address. The 10 Day Notice has an effective vacancy date of July 12, 2021, which is automatically corrected by section 53 of the Act to July 10, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$2,700.00 when it was due on July 1, 2021.

The Tenant advised me that the Landlords have entered the rental unit without his permission when he was there and when away. The Tenant said that on one occasion, he was in the shower when someone banged on the bathroom door. It turned out to be the co-landlord, J.Y., who had entered without notice to the Tenant. The Landlord said that they gave the Tenant notice via text about this inspection. I advised the Landlord that this is not a means by which notice may be given, pursuant to the Act.

The Tenant also said that he has been away from the rental unit periodically in the last few months. He said that someone entered the rental unit without his permission while he was away, and that they took his clothing off hangers and put them in bags. He said some pieces of his clothes were damaged in this process.

The Tenant said his belongings were then placed on the balcony, where they became soaked from the rains. The Tenant also said:

I would come home to see pictures of my driver's license with a sign – "Don't let him into the building." I was in the building and the door opened, and again, it was [J.Y.] there to remove more stuff in the unit. I was irate; the building manager came to the door, the cops came, as well. Yes, I owe the money, and I will pay it if they return my goods.

The Tenant also said that some of his personal possessions were missing when he returned, including, but not limited to his cordless vacuum cleaner, a lamp, the coffee

machine, some bowls and other kitchenware, a jewelry box and a camera that allows you to call in to it.

The Landlord did not deny having entered the rental unit and moved the Tenant's belongings, although, they denied having taken the vacuum cleaner.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Based on the undisputed evidence before me, I find that the Tenant owes the Landlord \$12,100.00 in unpaid rent, and I award the Landlord **\$12,100.00** from the Tenant, pursuant to sections 26 and 67 of the Act.

Section 46 of the Act states that 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content. Having reviewed it, I find that the 10 Day Notice complies with section 52 of the Act.

I find from the undisputed evidence before me that the Landlord is entitled to an order of possession of the rental unit, pursuant to section 55 of the Act. I, therefore, grant the Landlord an **Order of Possession** of the rental unit. However, I find that the Landlord interfered with the Tenant's right to quiet enjoyment of his suite, based on the Tenant's undisputed evidence of the Landlord entering the rental unit without proper notice under the Act, and without the Tenant's permission. The Landlord did not deny having removed the Tenant's clothing from hangers and putting the clothes in bags, then putting the bags and other items on the balcony. Section 26 (3) also states:

Rules about payment and non-payment of rent

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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations. .

[emphasis added]

I caution the Landlord to learn about their rights and obligations under the Act, as the evidence before me is that the Landlord does not hesitate to breach tenants' rights under the Act. They do not give proper notice of inspections and they interfered with and seized some of the Tenant's personal property, in defiance of the Act.

Based on the evidence before me overall, I find the Tenant was hindered in his ability to organize his possessions to be moved as soon as possible. Given these considerations of the evidence before me, I find it appropriate to have the effective vacancy date be December 15, 2021, as discussed in the hearing. The Tenant will owe the Landlord **\$2,350.00** in rent for December, in addition to the prior monetary award. This amount will be added to the Monetary Order awarded to the Landlord; therefore, the Tenant does not need to pay it separately on December 1, 2021.

At the end of the hearing, and on agreement of the Parties, I Ordered the Landlords to return the keys they had taken from the Tenant when he was away from the rental unit. This will allow the Tenant to access the residential property, get his mail, throw out garbage, and prepare to move. The Landlord agreed to return the **building access fob**, the **mail box key**, and the **key for the rental unit** to the Tenant at the residential property at 5:00 p.m. today, November 29, 2021. The Landlord's failure to abide by this agreement could be considered in any future claims the Tenant may make with the RTB.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$1,175.00 security deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's \$1,175.00 security deposit.

Given her success, I also award the Landlord with recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

Date Rent Due	Amount Owning	Amount Received	Date Received	Amount Owning
June 1, 2021	\$2,350.00	\$2,000.00	July 1	\$350.00
July 1	\$2,350.00	\$0.00	n/a	\$2,350.00
August 1	\$2,350.00	\$0.00	n/a	\$2,350.00
September 1	\$2,350.00	\$0.00	n/a	\$2,350.00
October 1	\$2,350.00	\$0.00	n/a	\$2,350.00
November 1	\$2,350.00	\$0.00	n/a	\$2,350.00
	SubTotal			\$12,100.00
	Dec. 2021 rent			\$2,350.00
	Filing fee			\$100.00
	Less Security Deposit			(\$1,175.00)
	TOTAL			\$13,375.00

I grant the Landlord a Monetary Order of **\$13,375.00** from the Tenant, pursuant to sections 26 and 67 of the Act.

I grant the Landlord an **Order of Possession**, pursuant to sections 46 and 55 of the Act, effective December 15, 2021 at 1:00 p.m.

Conclusion

The Landlord is successful in her Application for a Monetary Order for the recovery of unpaid rent, and for an Order of Possession, pursuant to having served the Tenant with a 10 Day Notice. The Landlord is also awarded recovery of the \$100.00 Application filing fee.

The Landlord is authorized to retain the Tenant's \$1,175.00 security deposit in partial satisfaction of the monetary awards. The Landlord is granted a Monetary Order of **\$13,375.00** for the remainder of the award amount owed to her by the Tenant.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Landlord is granted an **Order of Possession** from the Tenant, **effective December 15, 2021 at 1:00 p.m.** The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order, if necessary.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 29, 2021

Residential Tenancy Branch