



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL-S, FFL

Introduction

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

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated October 4, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, noting they held a security or pet deposit; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed 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 she served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Tenant by registered mail on November 4, 2021. The Tenant confirmed he received the documents. I find the Landlord served the Tenant in accordance with section 89 of the Act.

The Tenant confirmed he did not submit or serve any responsive evidence.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on September 22, 2020; rent is \$995.00, due on the first of the month; and the Tenant paid a security deposit of \$497.50, which the Landlord still holds.

A copy of the signed tenancy agreement was submitted as evidence. It notes a “minimum \$60 water/sewer surcharge due on the 1st with rent.” The Landlord testified this amount was set by a previous landlord, and confirmed that the additional amount the Tenant must pay monthly is \$50.00 for water; the Tenant agreed this was the case.

The Landlord testified she served the 10 Day Notice on the Tenant by posting it to the door on October 4, 2021. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant has failed to pay rent in the amount of \$995.00 due on October 1, 2021, and failed to pay utilities in the amount of \$50.00, following written demand on October 1, 2021. A copy of the 10 Day Notice was submitted as evidence.

The Tenant testified he received the 10 Day Notice in the middle of the month and that he did not apply to dispute it.

The Landlord testified she did not send the Tenant a demand letter for the unpaid utilities, i.e. water.

The Landlord submitted as evidence a Monetary Order Worksheet, showing that the Tenant owes as follows:

October 2021 rent	\$995.00
October water	\$50.00
October late fee	\$25.00
November 2021 rent	\$995.00
November water	\$50.00
November late fee	\$25.00
December 2021 rent	\$995.00
December water	\$50.00
December late fee	\$25.00

The Landlord testified the Tenant has not made any payments since the application was made.

The Tenant testified he is not disputing the past due amounts, he lost his job in September 2021, and is looking for a new residence and a job. The Tenant testified he intends to vacate the rental unit by the end of the month.

The Landlord testified she is seeking an order of possession effective two days after the Tenant receives it.

Analysis

At the heart of every tenancy agreement is the requirement to pay rent. 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.

Pursuant to section 46(1) of the Act, the 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. A notice under this section must comply with the form and content provisions of section 52.

I accept the Landlord's undisputed evidence that the Tenant has not paid rent and that the Landlord had cause to end the tenancy. I find the Landlord served the Tenant with the 10 Day Notice in accordance with section 88 of the Act, and deem the Tenant received the Notice on October 7, 2021, pursuant to section 90 of the Act. I find the 10 Day Notice meets the form and content requirements of section 52 of the Act.

I accept the Tenant's affirmed undisputed testimony that they did not dispute the 10 Day Notice. In accordance with section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on October 17, 2021, the effective date of the Notice, and that the Landlord is entitled to an order of possession.

I accept the Landlord's undisputed affirmed testimony that the Tenant owes the Landlord \$2,985.00 in unpaid rent for the months of October, November, and December

2021. There is no evidence before me that the Tenant had a legal right to withhold payment of rent. I find the Landlord is entitled to \$2,985.00 in unpaid rent.

Subsection (6) of section 46 **Landlord's notice: non-payment of rent** states:

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I accept the Landlord's undisputed affirmed testimony that the Tenant must pay \$50.00 a month for water, and that the Landlord did not provide the Tenant with a written demand for utilities.

As the Landlord has not provided the Tenant a written demand for utilities in accordance with 46(6) of the Act, I find she is not entitled to a monetary order for unpaid utilities.

I decline to grant the Landlord a monetary order for late fees, as late fees are not the same as rent, and the Landlord did not make an application to recover late fees from the Tenant.

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 the majority of their application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

I find the Landlord is entitled to a total monetary award of \$3,085.00. In accordance with sections 38 and 72 of the Act, I allow the Landlord to retain \$497.50 of the Tenant's security deposit in partial satisfaction of this monetary award as follows:

Item	Amount
Unpaid rent for October, November, and December 2021	\$2,985.00
Less Security Deposit	(-497.50)
Filing Fee	100.00
Total	\$2,587.50

I find the Landlord is entitled to a monetary order in the amount of \$2,587.50.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is received by the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,587.50 for unpaid rent and recovery of the filing fee. 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: December 22, 2021

Residential Tenancy Branch