



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, DRI, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On August 18, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking to dispute a rent increase pursuant to Section 41 of the *Act*.

On August 23, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent and Utilities based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing on time; however, the Tenant attended the hearing 15-minutes after the start of the hearing. The parties were informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he did not serve the Notice of Hearing package to the Landlords. As such, the Tenant’s Application was dismissed without leave to reapply.

Landlord R.S. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on September 13, 2021 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed testimony, I am

satisfied that the Notice of Hearing and evidence package has been deemed received by the Tenant five days after it was mailed. As such, I have accepted all of the Landlords' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords advised that the tenancy started on September 1, 2020, that rent was currently established at an amount of \$1,800.00 per month, and that it was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They submitted that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on August 7, 2021 by being posted to his door. R.S. testified that \$750.00 was owing for rent on August 1, 2021. He stated that \$450.00 was paid on August 1, 2021 by a society and that the Tenant paid \$600.00 on August 1, 2021. Thus,

the Notice was served. He submitted that the Tenant then paid an additional \$400.00 on August 14, 2021, leaving a balance owing of \$350.00 for August 2021 rent.

He then stated that a total of \$1,800.00 was paid in September 2021, that only \$950.00 was paid in October 2021, that only \$1,150.00 was paid in November 2021, and that no rent was paid for December 2021. Therefore, in addition to an Order of Possession, the Landlords also seeking a Monetary Order in the amount of **\$3,650.00** for rental arrears. The effective end date of the tenancy was noted on the Notice as August 17, 2021.

The Tenant advised that he did not have any submissions refuting the Landlords' testimony.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on August 10, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that "*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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."

As the Notice was deemed received on August 10, 2021, the Tenant must have paid the rent in full by August 15, 2021 or disputed the Notice by Monday August 16, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full by August 15, 2021 to cancel the Notice. While the Tenant disputed this Notice, the Tenant did not do so in time. As well, he did not serve the subsequent Notice of Hearing package and as a result, the Tenant's Application was dismissed without leave to reapply. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy.

As the Landlords' Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

In addition, I am satisfied that the Landlords are entitled to a monetary award for the rental arrears for August, October, November, and December 2021, and I grant the Landlords a monetary award in the amount of **\$3,650.00**.

As the Landlords were successful in their Application, I find that the Landlords are entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Rental arrears for August 2021	\$350.00
Rental arrears for October 2021	\$850.00
Rental arrears for November 2021	\$650.00
Rental arrears for December 2021	\$1,800.00

Filing Fee	\$100.00
Total Monetary Award	\$3,750.00

Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlords are provided with a Monetary Order in the amount of **\$3,750.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: December 20, 2021

Residential Tenancy Branch