



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

The hearing was reconvened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to section 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 38; and
- authorization to recover the filing fee for its application from the Tenant pursuant to section 72.

The initial hearing was held on December 14, 2021 at 11:00 am ("Initial Hearing") and, by consent of the parties, the hearing was adjourned to this date and time ("Reconvened Hearing").

KF attended the Initial Hearing and the Reconvened hearing, on behalf of the Landlord. The Tenant attended the Initial Hearing but did not attend the Reconvened Hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire Reconvened Hearing, which ended at 1:45 pm, in order to enable the Tenant to call into this teleconference hearing. All parties who attended the Initial Hearing and Reconvened Hearing were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding for the Reconvened Hearing. I also confirmed from the teleconference system that KF and I were the only ones who had called into the teleconference for the Reconvened Hearing.

KF testified the Tenant was served the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("NOH Package") by registered mail on August 13, 2021. KF provided the registered mail tracking number to corroborate service of the NOH Package on the Tenant. I find that the Tenant was served with the NOH Package in accordance with sections 88 and 89 of the Act.

The Residential Tenancy Branch ("RTB") served the parties with the Notice Dispute Resolution Proceeding for the Reconvened Hearing on December 9, 2021.

At the Initial Hearing, the Tenant stated she did not serve any evidence on the Landlord. The Initial Hearing was specifically adjourned so the Tenant could produce critical evidence to support her case.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for unpaid rent under section 67?
- recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's application and my findings are set out below.

The month-to-month tenancy commenced on August 1, 2018 at rent of \$750 per month payable on the 1st day of each month. No security or pet damage deposit was required to be paid by the Tenant.

KF testified the Landlord served the 10 Day Notice on the Tenant's door on May 19, 2021. KF submitted a signed Proof of Service on RTB Form 34 to corroborate her testimony. At the Initial Hearing, the Tenant acknowledged receipt of the 10 Day Notice. I find the 10 Day Notice was served on the Tenant in accordance with section 88 of the Act. I find the Tenant was deemed to have been served with the 10 Day Notice on May 22, 2021. The Tenant admitted that she has never made an application for dispute resolution to dispute the 10 Day Notice.

At the Initial Hearing, KF testified the Tenant did not pay the rent of \$750.00 owing on March 1, 2021 ("March Rent"). The Tenant testified that she paid the March Rent in cash at the Landlord's office but either neglected to obtain a receipt for the payment from an employee of the Landlord or, alternatively, she lost the receipt. The Tenant stated she withdrew the funds from her bank account in late February to pay for the March Rent. The Landlord and Tenant were agreeable to an adjournment of the hearing to allow the Tenant the opportunity to provide a bank statement corroborating her testimony that she had obtained the cash from her bank to pay the March Rent.

With the consent of the parties the hearing was adjourned. However, as noted above, the Tenant did not attend the Reconvened Hearing. In my interim decision, I ordered the Tenant to serve the Landlord and the RTB by December 6, 2021 with a statement from her financial institution corroborating her testimony that she withdrew sufficient cash in late February 2021 to pay the March Rent. The Landlord testified the Tenant has failed to serve that evidence on the Landlord or the RTB and that the March Rent remains outstanding.

Analysis

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.

The Act provides very limited and specific circumstances when a tenant may withhold rent such as: (i) where a tenant has overpaid a security deposit and/or pet damage deposit; (ii) where a tenant has previously overpaid the rent; (iii) where authorization has been given by the landlord or an arbitrator or; (iv) where the landlord does not reimburse the tenant for emergency repairs that have been made by the Tenant.

I find that monthly rent is \$750.00 and is due on the first of the month. The Landlord testified that the Tenant did not pay the March Rent.

The Tenant did not provide any testimony or evidence at the hearing to prove she was excused, pursuant to any provisions of the Act, from paying the March Rent. The Initial Hearing was specifically adjourned in order that the Tenant would have the opportunity to obtain and submit evidence to corroborate her testimony that she withdrew the cash

from her bank in late February to pay the March rent. The Tenant did not serve the Landlord or RTB with any evidence, when given the opportunity to do so, prior to the commencement of this Adjourned Hearing to corroborate her statement. As the Tenant has failed to provide such evidence, I accept the Landlord's undisputed testimony the Tenant did not pay the March Rent. As such, I find that the Tenant was required to pay the March Rent.

Subsection 46(4) of the Act states:

- 46(4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

The 10 Day Notice was served on the Tenant's door on May 19, 2021. Pursuant to section 90, the Tenant was deemed to have received the 10 Day Notice on May 22, 2021. Pursuant to section 46(4) of the Act, the Tenant had until May 27, 2021 to either pay the rental arrears or make an application for dispute resolution to dispute the 10 Day Notice. I find the Tenant did not pay the March Rent within the five-day dispute period. The Tenant admitted that she did not make an application for dispute resolution to dispute the 10 Day Notice.

Section 46(5) of the Act states:

- 46(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.

[emphasis in italics added]

I find the monthly rent is \$750.00 and that the Tenant did not pay the March Rent. As the Tenant did not pay the March Rent nor make an application for dispute resolution to dispute the 10 Day Notice within 5 days of deemed service of the 10 Day Notice, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being June 7, 2021. As such, I find the 10 Day Notice was issued for a valid reason.

I have reviewed the 10 Day Notice and find it complies with section 52 form and content requirements. The Tenant has not vacated the rental unit. Accordingly, pursuant to section 55(1) of the Act, I order the Tenant provide the Landlord with vacant possession of the rental unit.

As I have found the Tenant has \$750.00 in rental arrears for the March Rent, the Tenant must compensate the Landlord this amount. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$750.00 in satisfaction of the arrears owed.

As the Landlord has been successful in its application, it may recover their filing fee from the Tenant pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 67 of the Act, I order that the Tenant pay the Landlord \$850.00, representing the following:

Description	Amount
Rental Arrears for March 2021	\$750.00
Landlord's Filing Fee for Application	\$100.00
Total	\$850.00

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial Court.

Pursuant to section 55 of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached orders by the Landlord. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 21, 2021

Residential Tenancy Branch