



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

The Landlord applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy dated September 7, 2021 (the “10-Day Notice”);
- A monetary order pursuant to s. 67 for unpaid rent; and
- Return of their filing fee pursuant to s. 72.

The Landlord’s application was originally filed as a direct request and was adjourned to a participatory hearing by the adjudicator for the direct request application.

J.M. and T.K. appeared on their own behalf as Landlords. The Tenant did not attend the hearing, nor did someone attend on her behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled. As the Tenant failed to attend, the hearing was conducted in her absence as provided for by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

J.M. advised that he personally served the Tenant with the 10-Day Notice on September 7, 2021. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* on September 7, 2021.

J.M. further advised that the Notice of Dispute Resolution for the participatory hearing including all the Landlords’ evidence was served on the Tenant by way of registered

mail sent on November 12, 2021. The Landlords provide photographs of the packages, which had been returned to them after the Tenant failed to pick them up.

Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlords are entitled to serve the Notice of Dispute Resolution and evidence by way of registered mail in accordance with s. 89 of the Act. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the Act. The registered mail package was sent to the correct address, as evidenced by the photographs of the package provided by the Landlords. I accept that the Notice of Dispute Resolution was served in accordance with s. 89 of the Act. Pursuant to s. 90 of the Act, I deem that the Tenant received the Landlords' application materials for the participatory hearing on November 17, 2021.

Issue(s) to be Decided

- 1) Are the Landlords entitled to an order for possession?
- 2) Are the Landlords entitled to an order for unpaid rent?
- 3) Are the Landlords entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlords advised that the tenancy began on February 1, 2021. A written tenancy agreement was put into evidence by the Landlords. J.M. confirmed that rent of \$1,650.00 was due on the first day of every month and that the Landlords hold a security deposit of \$800.00 in trust for the Tenant.

The Landlords confirmed that the Tenant continues to reside within the rental unit.

The Landlords say that the 10-Day Notice was issued on September 7, 2021 after the Tenant had accrued arrears in her rent payments of \$4,250 by September 1, 2021.

The Landlords provide a rent ledger with respect to the tenancy and confirmed the following details on how they arrived at the amount listed in the 10-Day Notice:

Month	Rent Due	Rent Paid	Difference
February 2021	\$1,650.00	\$1,600.00	-\$50.00
March 2021	\$1,650.00	\$1,650.00	\$0.00
April 2021	\$1,650.00	\$1,450.00	-\$200.00
May 2021	\$1,650.00	\$1,950.00	\$300.00
June 2021	\$1,650.00	\$1,500.00	-\$150.00
July 2021	\$1,650.00	\$500.00	-\$1,150.00
August 2021	\$1,650.00	\$300.00	-\$1,350.00
September 2021	\$1,650.00	\$0.00	-\$1,650.00
Total arrears claimed by Landlords as of September 1, 2021			\$4,250.00

The Landlords indicate that they received a payment of \$400.00 from the Tenant on September 15, 2021. They provide text messages in which the Tenant asks that the Landlord return \$100.00. The Landlord indicates that they did return \$100.00 to the Tenant at that time. The Landlords say that the net payment they received from the Tenant on September 15, 2021 was \$300.00.

The Landlords further state that they have not received rent payments from the Tenant since the \$300.00 payment on September 15, 2021. The Landlords ask that the monetary claim be revised to reflect unpaid rent for October 2021, November 2021, December 2021, and January 2022. The Landlords further confirm that they have not received an application with the Tenant disputing the 10-Day Notice.

Analysis

Pursuant to s. 46(1) of the Act, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I have reviewed the 10-Day Notice put into evidence by the Landlords. I note that s. 52 of the Act provides that notices to end tenancy, when issued by a landlord, must be in

the approved form. The 10-Day Notice itself is an older version of the current RTB-30 from 2012. I find that the old version of RTB-30 contains all the same substantive information as set out in the current version of RTB-30. I further find that the technical deficiency of using the older form is in no way problematic as it is clear that the Tenant knew that the tenancy would end within 10-days if she failed to pay rent or dispute the notice within 5 days of receiving the 10-Day Notice. All the other relevant information is in the 10-Day Notice. I find that the 10-Day Notice complies with the formal requirements of s. 52 of the *Act*.

When a 10-day Notice to End Tenancy is issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch.

In this case, the Tenant did neither. Given this, s. 46(5) comes into effect and I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is September 17, 2021. As the Tenant continues to reside within the rental unit, I find that she is overholding. I find that the Landlords have demonstrated that they are entitled to an order for possession and shall have that order.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

With respect to the Landlords' claim for unpaid rent, I accept the Landlords' uncontradicted evidence that they Tenant paid rent as set out in the rent ledger they put into evidence. I permit the Landlords to amend their monetary claim to reflect the unpaid rent since making their application as permitted under Rule 4.2 of the Rules of

Procedure. I find that the Tenant's failure to pay rent was in breach of her obligations under the tenancy agreement and s. 26 of the *Act*, that the Landlords suffered a quantifiable loss due to the non-payment of rent, and that the Landlords could not have mitigated their losses as the Tenant continues to reside within the rental unit.

I find that the Landlord's have proven that the Tenant owes the following amounts:

Month	Rent Due	Rent Paid	Difference
February 2021	\$1,650.00	\$1,600.00	-\$50.00
March 2021	\$1,650.00	\$1,650.00	\$0.00
April 2021	\$1,650.00	\$1,450.00	-\$200.00
May 2021	\$1,650.00	\$1,950.00	\$300.00
June 2021	\$1,650.00	\$1,500.00	-\$150.00
July 2021	\$1,650.00	\$500.00	-\$1,150.00
August 2021	\$1,650.00	\$300.00	-\$1,350.00
September 2021	\$1,650.00	\$300.00	-\$1,350.00
October 2021	\$1,650.00	\$0.00	-\$1,650.00
November 2021	\$1,650.00	\$0.00	-\$1,650.00
December 2021	\$1,650.00	\$0.00	-\$1,650.00
January 2022	\$1,650.00	\$0.00	-\$1,650.00
Total Arrears in Rent			\$10,550.00

Accordingly, I find that the Tenant owes \$10,550.00 to the Landlords for unpaid rent.

As the Landlords were successful in their application, I find that the Tenant should pay the Landlords' application fee. Pursuant to s. 72(1) of the *Act*, I order the Tenant to pay the Landlord's application fee.

I further exercise my discretion under s. 72(2) of the *Act* and direct that the Landlords retain the security deposit of \$800.00 in partial satisfaction of the total amount owed to them by the Tenant.

Conclusion

I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and that the Landlords are entitled to an order for possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit within **two (2) days** of being served with the order for possession.

I further find that the Landlords are entitled to a monetary order for unpaid rent and that they have proven total unpaid rent of \$10,550.00.

I order that the Tenant pay the Landlords' application fee and direct that the Landlords retain the security deposit in partial satisfaction of the total amount owed by the Tenant.

I make a total monetary order in favour of the Landlords taking the following into account:

Item	Amount
Unpaid rent	\$10,550.00
Tenant to pay Landlords Application fee as per s. 72(1).	\$100.00
Less the security deposit to be retained by the Landlords	-\$800.00
TOTAL	\$9,850.00

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$9,850.00** to the Landlords.

It is the Landlords obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order for possession, it may be filed by the Landlords with 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: January 20, 2022

Residential Tenancy Branch