



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

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 October 20, 2021 (the “10-Day Notice”);
- An order for unpaid rent pursuant to s. 67; and
- An order pursuant to s. 72 for return of their filing fee.

M.M. appeared as agent for the Landlord. W.J. appeared as property manager and witness for the Landlord. K.W. appeared on his own behalf as Tenant.

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.

W.J. advised that he posted the 10-Day Notice on the Tenant’s door on October 20, 2021. The Landlord submits a proof of service form confirming this, which is signed by W.J. and indicates that R.S. witnessed W.J. post the 10-Day Notice on the Tenant’s door. The Tenant denies receiving the 10-Day Notice and indicates that he had only seen the 10-Day Notice when he received the Notice of Dispute Resolution and evidence from the Landlord.

I find that the Landlord served the 10-Day Notice in accordance with s. 88 of the *Act* by posting it to the Tenant’s door on October 20, 2021. I make this finding based on W.J.’s affirmed evidence at the hearing and based on the proof of service form that confirms the details of service and shows that service was witnessed by R.S. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on October 23, 2021.

The Landlord advises that they served the Tenant with the Notice of Dispute Resolution and evidence by way of registered mail sent on November 12, 2021. A registered mail receipt was put into evidence by the Landlord. The Tenant confirms receipt of the Notice of Dispute Resolution and the Landlord's evidence. I find that the Landlord's application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's application materials on November 17, 2021.

The Tenant confirmed that he did not serve responding evidence on the Landlord.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order for possession pursuant to the 10-Day Notice?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord 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 parties confirmed the following details with respect to the tenancy:

- The tenancy began on July 1, 2012;
- Up to December 31, 2021, rent of \$684.00 was due on the first day of each month; and
- The Landlord holds a security deposit of \$312.50 in trust for the Tenant.

The parties confirmed that rent increased to \$694.26 on January 1, 2022. The Landlord confirmed that they failed to put the notice of rent increase into evidence for this hearing. The Tenant confirmed rent for January 1, 2022 was \$694.26.

The Landlord advises that 10-Day Notice was issued after the Tenant had failed to pay rent of \$684.00 on October 1, 2021. The Landlord says that they received the Tenant's rent payment for October on October 29, 2021, which is evidenced by a rent ledger provided by the Landlord.

The Landlord further states that the Tenant failed to pay rent when due on November 1, 2021, December 1, 2021, and January 1, 2022. The Landlord confirmed that they would be seeking the following for unpaid rent:

November 1, 2021	\$684.00
December 1, 2021	\$684.00
<u>January 1, 2022</u>	<u>\$684.00</u>
TOTAL	\$2,052.00

M.M. confirmed that the Landlord would abandon their claim for the rent increase for January 2022 on the basis that the Landlord had failed to upload the notice of rent increase.

The Tenant acknowledges that he failed to pay rent as alleged by the Landlord. He states that there have been issues with respect to his income and that he had some money stolen from him recently. He further argues that there are issues with respect to maintenance at the property.

The parties confirmed that the Tenant did not apply to dispute the 10-Day Notice. The Tenant argued that this was because he was not served with the 10-Day Notice.

Analysis

The Landlord seeks an order for possession and an order for unpaid rent.

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.

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. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at

any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant acknowledges that rent was paid on October 29, 2021 and further acknowledges that he did not file to dispute the 10-Day Notice. He argues that he did not receive the 10-Day Notice from the Landlord. As mentioned above, I accept the Landlord's evidence on the point of service of the 10-Day Notice and find that it was served in accordance with the *Act* by having it posted to the Tenant's door on October 20, 2021.

The Tenant argues there have been maintenance issues at the residential property. Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

None of these circumstances are presently applicable and the Tenant did not argue that he paid out of pocket for emergency repairs. Rent is due as set out in the tenancy agreement and the Tenant acknowledges not having paid as set out by the Landlord in their evidence.

As the Tenant failed to either dispute the 10-Day Notice or pay rent within 5-days of receiving the notice, s. 46(5) comes into effect and I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have vacated the rental unit on the effective date.

As the Tenant continues to reside within the rental unit, I find that the Tenant is overholding. The Landlord has established that they are entitled to an order for possession, and they shall receive that order.

With respect to unpaid rent, the parties agree that the Tenant failed to pay rent for November 2021, December 2021, and January 2022. I am satisfied that Tenant is in arrears in the amount of \$2,052.00 as claimed by the Landlord and agreed to by the Tenant. I find that the Landlord has established their claim for unpaid rent due to the Tenant's failure to pay it when it was due as per the tenancy agreement.

The Landlord was successful in their application. I find that they are entitled to the return of their filing fee and order pursuant to s. 72(1) that the Tenant pay them \$100.00 for their filing fee.

I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit of \$312.50 they currently hold in trust for the Tenant in partial satisfaction of the total amount owed by the Tenant.

Conclusion

The Landlord has established that the 10-Day Notice was served in accordance with the *Act*. As the Tenant neither paid rent nor disputed the 10-Day Notice within 5-days of receiving the notice, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy. As the Tenant continues to reside in the rental unit past the effective date of the 10-Day Notice, I grant the Landlord an order for possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order for possession.

The Landlord has established that they are entitled to an order for unpaid rent.

I make a monetary award in favour of the Landlord taking the following into account:

Item	Amount
Unpaid rent (Nov 2021 to Jan 2022)	\$2,052.00
Landlord's filing fee pursuant to s. 72(1)	\$100.00
Less security deposit to be retained by Landlord in accordance with s. 72(2)	-\$312.50
TOTAL MONETARY ORDER	\$1,839.50

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$1,839.50** to the Landlord.

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 17, 2022

Residential Tenancy Branch