



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Madison Villa Ent. Ltd (Theresa Jean
Apts) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This hearing originally convened as a Direct Request proceeding. This participatory hearing was ordered in an Interim Decision dated December 3, 2021. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the "agent") attended the hearing and was 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 Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that he was not recording this dispute resolution hearing.

The agent confirmed the landlord's email addresses for service of this decision and orders.

Preliminary Issue- Service

The Interim Decision stated:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The agent testified that the above documents were served on the tenant via registered mail on December 6, 2021. The Canada Post registered mail customer receipt was entered into evidence. The Canada Post website confirms that the above package was mailed on December 6, 2021. I find that the tenant was deemed served with the above documents via registered mail on December 11, 2021, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on May 1, 1994 and is currently ongoing. Monthly rent in the amount of \$890.00 and a \$30.00 parking fee are payable on the first day of each month. A security deposit of \$315.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both

parties and a copy was submitted for this application. The landlord on the tenancy agreement is different than the landlord named on this application for dispute resolution. The agent testified that the landlord company purchased the subject rental building in November of 2007, after the tenancy agreement was signed, which is why the names differ.

The tenancy agreement states that at the start of this tenancy rent was \$630.00 due on the first day of every month. The agent testified that the landlord has increased the rent 11 times in accordance with the *Act*; however, some of the rent increase forms have been lost and so were not entered into evidence. The agent testified that rent is currently \$890.00 per month.

The agent testified that the tenant's October 2021 rent cheque was NSF. The agent entered into evidence a bank statement showing the tenant's October 2021 rent cheque was return due to insufficient funds. The agent testified that after the tenant was informed that her cheque bounced, she did not make any attempt to pay October 2021's rent, so a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was personally served on the tenant on October 8, 2021. A witnessed proof of service document stating same was entered into evidence.

The 10 Day Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$920.00 that was due on October 1, 2021. The 10 Day Notice states that the tenant must vacate the subject rental property by October 18, 2021. The agent testified that the tenant never paid October 2021's rent but has paid for her occupancy of the subject rental property for the months of November 2021 to January 2022.

Analysis

I accept the agent's undisputed testimony that the landlord's name on the tenancy agreement is the previous landlord and that the landlord listed on this application for dispute resolution is the current landlord.

I accept the agent's undisputed testimony that rent was increased in accordance with the *Act* and is currently \$890.00.

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenant. Based on the agent's testimony and the witnessed proof of service document, I find that the tenant was served with the 10 Day Notice on October 8, 2021, in accordance with section 88 of the *Act*.

Based on the undisputed testimony of the agent and the bank statement entered into evidence, I find that the tenant failed to pay rent on October 1, 2021, when it was due. Based on the undisputed testimony of the agent, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by October 18, 2021, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$890.00 on the first day of each month. Based on the testimony of the agent and the bank statement entered into evidence, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$890.00 in unpaid rent for October of 2021. I note that the parking fee is not rent. As the landlord only applied for a Monetary Order for unpaid rent and not a Monetary Order for damage or compensation, I am not able to award the parking fee; however, the landlord is at liberty to file such a claim in the future.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$315.00.

Conclusion

Pursuant to sections 46 and 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
October rent	\$890.00
Filing fee	\$100.00
Less security deposit	-\$315.00
TOTAL	\$675.00

The landlord is provided with this Order 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: January 11, 2022

Residential Tenancy Branch