



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPU-DR, MNU-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant was assisted by their advocate in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlords' application and hearing package. In accordance with sections 88 and 89 the *Act*, I find that the tenant duly served with the landlords' application and evidence package. The tenant did not submit any evidence for this hearing.

The landlords testified that the tenant was served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 5, 2021 ("10 Day Notice") on August 6, 2021 by way of posting the notice on the tenant's door. The tenant confirmed receipt of this 10 Day Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the landlords' 10 Day Notice on August 9, 2021, three days after its posting.

Although the landlords had applied for a monetary Order of \$4,562.15 in their initial claim, since they applied another \$7,200.00 in rent has become owing that was not included in their application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$4,562.15 to \$11,762.15 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenant's advocate made an application requesting an adjournment of the hearing in order for the tenant to submit evidence. The advocate testified that the tenant was under a substantial amount of stress as they were responsible for two young children, and had no power in the home. The tenant's advocate testified that the evidence would have a material effect on the decision of the Arbitrator as they wanted to obtain copies of the electric bill and rejected e-transfers. The advocate testified that they would be able to obtain the documents quickly.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

While I am sympathetic to the tenant's situation, I find that the tenant failed to establish how this adjournment request was due to issues beyond their control. Although the tenant does have significant responsibilities in having to care for their children, and although the tenant faced difficulties such as the lack of power, I find that the tenant had several months to prepare for this hearing, and the tenant has failed to establish why they were unable to obtain and submit the relevant evidence for this hearing given the fact that the documents would have been available prior to the hearing date. I am not

satisfied that the adjournment request was not due to the intentional actions or neglect of the tenant.

Furthermore, as this matter pertains to the matter of a significant amount of unpaid rent, I find the landlords would be significantly prejudiced by a delay in this matter by adjourning the hearing and delaying this matter.

The request for an adjournment was not granted. The hearing proceed

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?

Are the landlords entitled to monetary order for unpaid rent or utilities?

Are the landlords entitled to recover their filing fee for this application?

Background and Evidence

This month-to-month tenancy began on January 1, 2019, with monthly rent in the amount of \$1,200.00 payable on the first day of each month. The landlords hold a security deposit in the amount of \$600.00 and a pet damage deposit in the amount of \$100.00 for this tenancy. The tenant still resides at the rental suite.

The landlords served the tenant with a 10 Day Notice on August 6, 2021 for failing to pay \$3,600.00 in outstanding rent and \$962.15 in unpaid utilities. The landlords testified that since the tenant was served with the 10 Day Notice, the tenant now owes an additional \$7,200.00 in outstanding rent for this tenancy. The landlords are also seeking a monetary order for unpaid utilities. The landlords submitted copies of the utility statements as well as a 30 day demand letter they sent to the tenant. The landlord is requesting a monetary order for the money owed, as well as an Order of Possession.

The tenant testified that they had attempted to send payment to the landlords in September 2021, which the landlords had refused to accept. The tenant testified that there were discussions about repaying the rent to the landlord, but the landlords failed to respond to the tenant. The advocate for the tenant also argued that the landlords had served the tenant with a 10 Day Notice during a period when the Emergency Order prohibiting evictions was in effect. The tenant also disputes having received any utility bills, and testified that their power had been shut off.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenant pay the outstanding rent in full.

Although it is undisputed that the tenant did attempt to make payments to the landlords in September 2021, which were rejected by the landlords, I find that this is well after the 5 days allowed under the *Act*. The tenant's advocate also argued that there was a Ministerial Order in place that prevented the landlords from being able to serve the tenant with a 10 Day Notice to End Tenancy. The Ministerial Order dated June 24, 2020 which prohibited the issuance of a Notice to End Tenancy under section 46 of the *Act* was no longer in effect at the time the 10 Day Notice was served on the tenant. I also note that Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures set out guidelines for repayment of rent for the "affected rent" period of March 18, 2020 to August 17, 2020. As per the Policy Guideline and associated tenancy regulation, "a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required." In this case, the unpaid rent does not qualify as "affected rent" under the definition of Policy Guideline #52.

As the tenant has failed to dispute the 10 Day Notice or pay the outstanding rent in full within 5 days of being deemed to have received the 10 Day Notice, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, August 19, 2021.

I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenant and anyone on the premises to vacate the premises by August 19, 2021. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

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 landlords provided undisputed evidence that the tenant continues to reside in the rental unit, and now owes \$10,800.00 in outstanding rent. I therefore allow the landlords a monetary order for that amount.

The tenant disputes that they were provided with copies of the utility notices for the outstanding utilities. The tenant also testified that the landlords had denied them access to power during this tenancy. Accordingly, I dismiss the landlords' monetary claim for unpaid utilities with leave to reapply.

The landlords continue to hold the tenant's security and pet damage deposits of \$600.00 and \$100.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's deposits in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. 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.

I issue a \$10,200.00 Monetary Order in favour of the landlords under the following terms:

Item	Amount
Unpaid Rent	\$10,800.00
Recovery of Filing Fee for this Application	100.00
Security Deposit and Pet Damage Deposit	-700.00
Total Monetary Order	\$10,200.00

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.

The landlords' monetary claim for unpaid utilities is dismissed with leave to reapply.

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 28, 2022

Residential Tenancy Branch