



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On October 5, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.M. attended the hearing as an agent for the Landlord. C.P. attended the hearing as an advocate for the Tenant. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Prior to commencement of the hearing, C.P. advised that she was attending the hearing on behalf of the Tenant as he was in poor mental health and not able to attend the hearing. She requested an adjournment because she had recently only been informed of the Tenant’s circumstances and was unable to adequately prepare for the hearing. She claimed to have had discussions with an agent of the Landlord recently whereby she paid some recent months of rent, and this person advised her that the hearing would be adjourned. She did not provide any medical documentation to corroborate the

Tenant's medical condition, nor was any evidence submitted to corroborate rent payments or an agreement by the Landlord to adjourn the hearing.

L.M. was provided with an opportunity to make submissions on this adjournment request. She exited the teleconference to contact other representatives of the Landlord and when she returned, she advised that she could not confirm if any rent payments were made. As well, there was no indication that any agreement was made to adjourn the hearing. As such, she proposed a settlement offer instead.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. When reviewing C.P.'s submissions with respect to an adjournment request, I note that there was no medical documentation submitted to corroborate the Tenant's ill health. Furthermore, there was no documentary evidence submitted of an agreement to adjourn the hearing. Given that there is a lack of evidence to substantiate these claims, and as these issues have nothing to do with the non-payment of rent from July 2021, I do not find that the criteria for an adjournment was satisfactorily met. As this matter pertains to a non-payment of rent issue stemming from approximately seven months ago, I find that adjourning the hearing would be prejudicial to the Landlord. As such, I did not allow C.P.'s request for an adjournment.

L.M. advised that the Notice of Hearing and evidence package was served to the Tenant by Xpresspost on or around October 7, 2021, and it was returned to sender (the Xpress post tracking numbers is noted on the first page of this Decision). She stated that this package was then mailed to the Tenant on November 17, 2021, so he would have received it. C.P. could not speak to this as she was only advised of this situation by the Tenant a few weeks ago. Regardless, based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received this Notice of Hearing and evidence package five days after it was sent by Xpresspost. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

C.P. confirmed that no documentary evidence was submitted for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

L.M. advised that the tenancy started on November 1, 1999, that the rent was established at an amount of \$885.00 per month prior to a rent increase in January 2022, and that it was due on the first day of each month. A security deposit of \$275.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on September 7, 2021 by mail. She testified that \$885.00 was owing for rent for each month of July, August, and September 2021, but the Tenant did not pay this rent at all. Thus, the Notice was served. In addition, she submitted that the Tenant did not pay any rent for any months since the service of the Notice. The effective end date of the tenancy was noted on the Notice as September 22, 2021.

C.P. did not make any submissions with respect to the rental arrears starting in July 2021; however, she claimed to have paid the Landlord for two months of rent in February 2022.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me, is that the Tenant would have been deemed to have received the Notice on September 12, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was deemed to have been received on September 12, 2021, the Tenant must have paid the rent in full or disputed the Notice by September 17, 2021 at the latest. As there is no evidence that the Tenant paid the rent in full, to cancel the Notice, or disputed the Notice by September 17, 2021, I am satisfied that the Tenant has been conclusively presumed to have accepted the Notice. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy.

While C.P. claimed to have paid some money to the Landlord, there is no evidence before me that this was done. Regardless, this does not change the fact that the Tenant did not comply with the *Act* after being served the Notice.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied

with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rental arrears for July to December 2021. While L.M. claimed that there was a legal rent increase implemented for January 2022, I do not find any documentary evidence to support this. Furthermore, C.P. suggested that some payments have been allegedly made for rent in 2022; however, there was no documentary evidence to corroborate this. As such, I grant the Landlord a monetary award in the amount of **\$5,310.00** for rent arrears from July 2021 to December 2021 only. The Landlord is at liberty to apply for any outstanding rental arrears from January 2022 onwards in a separate Application.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for July 2021	\$885.00
Rental arrears for August 2021	\$885.00
Rental arrears for September 2021	\$885.00
Rental arrears for October 2021	\$885.00
Rental arrears for November 2021	\$885.00
Rental arrears for December 2021	\$885.00
Filing Fee	\$100.00
Total Monetary Award	\$5,410.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$5,410.00** 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: February 14, 2022

Residential Tenancy Branch