



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM as agent for Rex Holding
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:31 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. The landlord, represented by agents PN (the landlord) and NG, 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord served the notice of direct request proceeding and the evidence by attaching them to the rental unit's door on November 30, 2021. The landlord attached one copy for each tenant. The landlord submitted into evidence two witnessed proof of service forms (RTB44).

The landlord served the notice of hearing and the interim decision by registered mail on January 12, 2022. The tracking numbers are recorded on the cover page of this decision. The landlord mailed the packages to the rental unit's address recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the proof of service forms (RTB44), I find the landlord served the tenants the notice of direct request proceeding and the evidence in accordance with section 89(2)(d) of the Act.

Based on the landlord's convincing testimony and the tracking numbers, I find the landlord served the tenants the notice of hearing and the interim decision in accordance with section 89(2)(b) of the Act.

Per section 90(c) of the Act, the tenants are deemed to have received the notice direct request proceeding and the evidence on December 03, 2021.

Per section 90(a) of the Act, the tenants are deemed to have received the notice of hearing and the interim decision on January 17, 2022.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Preliminary Issue – Correction of the Landlord's Name

The notice of direct request proceeding and the notice of hearing name the applicant landlord JK.

The tenancy agreement indicates the landlord is "PCPM as agent for Rex Holding".

At the outset of the hearing the landlord affirmed that the named applicant landlord JK was an employee of the landlord PCPM as agent for Rex Holding, JK no longer works for PCPM and that JK named himself the applicant by mistake.

The landlord stated that the address for service of documents of landlord PCPM as agent for Rex Holding is the same address for service for JK.

Pursuant to section 64(3)(a) of the Act, I have amended the application to remove applicant named JK and include applicant named PCPM as agent for Rex Holding.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$1,275.00 in unpaid rent to include an additional \$2,825.00 for the balance of the unpaid rent of December 2021 (\$275.00) and the unpaid rent of January and February 2022 (\$1,275.00 per month).

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$4,100.00.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

The landlord testified the tenancy started on May 01, 2021. Monthly rent is \$1,275.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$637.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the rental unit number is slightly different than the unit number indicated in this application for dispute resolution.

The landlord said that the correct address of the rental unit is the address used in this application and recorded on the cover page of this decision. The landlord affirmed the tenancy agreement indicates the rental unit containing a letter in addition to the rental unit number by mistake.

The landlord stated he served the Notice by attaching it to the rental unit's door on November 08, 2021, at 6:30 P.M. The landlord submitted a witnessed proof of service (RTB34).

The landlord submitted into evidence a copy of the November 08, 2021 Notice. It indicates the tenants did not pay rent in the amount of \$1,275.00 due on November 01, 2021. The landlord is PCPM as agent for Rex Holdings Ltd. The effective date is November 21, 2021.

The landlord testified the tenants paid \$1,000.00 for December 2021 rent on January 28, 2022 and continue to occupy the rental unit.

The landlord is claiming for \$1,275.00 in unpaid rent for November 2021, \$275.00 for December 2021, \$1,275.00 for January 2022 and \$1,275.00 for February 2022. The landlord is not claiming unpaid utilities. The landlord submitted a direct request worksheet.

Analysis

I accept the uncontested testimony that the landlord served the Notice on November 08, 2021 in accordance with section 88(g) of the Act. Per section 90 (c) of the Act, the tenants are deemed to have received the Notice on November 11, 2021.

Order of possession

Based on the landlord's convincing testimony and the tenancy agreement, I find that the parties agreed to a tenancy and the tenants are obligated to pay the monthly rent in the amount of \$1,275.00 on the first day of each month.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the landlord's convincing testimony, I find the tenants have not paid the full amount of rent due.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and is in the approved form.

Based on the above, I find the tenancy ended on November 21, 2021, per section 44(1)(a)(ii) of the Act. I award the landlord an order of possession, per section 55(2)(b) of the Act.

Monetary order

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 the Act.

Section 57(3) of the Act states: "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

Based on the landlord's undisputed testimony, the tenancy agreement, the Notice and the direct request worksheet, I find the tenants did not pay the rent in accordance with section 26(1) of the Act.

Per section 26(1) of the Act, I award the landlord unpaid rent from November 01 to 21, 2021 in the amount of \$892.50 for November 2021 ($\$1,275.00 / 30 \times 21$ days).

The landlord is at liberty to apply for compensation for overholding tenant.

Filing fee and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$637.50 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent	892.50
Filing fee	100.00
Subtotal	992.50
Deposit	637.50 (minus)
Total:	355.00

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$637.50 deposit and award the landlord \$355.00. The landlord is provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants 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 16, 2022

Residential Tenancy Branch