



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

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 7, 2021 (the “10-Day Notice”);
- A monetary order for unpaid rent pursuant to s. 67 of the *Act*, and
- Return of their filing fee pursuant to s. 72.

L.M. appeared as agent for the Landlord. The Tenants did not attend, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord’s agent 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 Landlord’s agent confirmed that she was not recording the hearing.

The Landlord’s agent advised that the 10-Day Notice was served on the Tenants by way of regular mail sent on October 7, 2021. I find that the 10-Day Notice was served on the Tenants in accordance with s. 88(c) of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the 10-Day Notice on October 12, 2021.

The Landlord’s agent further advised that the Notice of Dispute Resolution and the Landlord’s evidence was served on the Tenant by way of registered mail sent on November 17, 2021. The Landlord provides registered mail receipts as evidence of service. I find that the Tenants were served with the Landlord’s application materials in

accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem that the Tenants received the Landlord's application materials on November 22, 2021.

I note that the Landlord provided updated rent ledgers to the Residential Tenancy Branch on February 23, 2022. The Landlord failed to demonstrate service with respect to this evidence nor was it explained why the evidence was provided to the Residential Tenancy Branch a mere day before the hearing. I find that the Landlord failed to demonstrate service with respect to the late evidence and failed to demonstrate that its late inclusion would be appropriate given that their evidence ought to have been served at least 14-days before the hearing as per Rule 3.14 of the Rules of Procedure. The updated rent ledgers are not admitted into evidence.

Issue(s) to be Decided

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

- The Tenants began to occupy the rental unit on June 1, 2015.
- Rent of \$1,120.43 was due on the first day of each month until a rent increase took effect on January 1, 2022, thereafter rent increased to \$1,137.23.
- The Landlord holds a security deposit in trust for the Tenants in the amount of \$497.50.

A copy of the written tenancy agreement was put into evidence by the Landlord. The Landlord's agent advised that the Tenant was to pay an additional \$100.00 each month for parking. I am told there is a parking addendum with respect to the \$100.00 fee. However, the addendum was not put into evidence.

The Landlord provides a rent ledger comprising all payments and charges from the beginning of the tenancy in the fall of 2015 until November 1, 2021. The ledger

demonstrates that Tenants fell into arrears beginning as early as July of 2016, though arrears began to accrue most significantly in the spring of 2020. The Tenants would make additional payments, then fall into arrears, and so it went until the 10-Day Notice was issued in the fall of 2021. The Landlord's agent confirmed there was no repayment plan entered into by the parties.

As of October 31, 2021 the ledger indicates that the Tenants were in arrears of rent in the amount of \$2,614.31.

The 10-Day Notice was issued and indicate that as of November 1, 2021 the Tenants ought to have paid \$1,464.31. The Landlord's agent confirmed the amount listed in the 10-Day Notice is incorrect and the Tenants arrears as at November 1, 2021 was \$3,834.74.

The Landlord's agent advised that since the 10-Day Notice was issued, the Tenant made two payments for rent: the first on November 22, 2021 in the amount of \$2,300.00 and the second on February 3, 2022 in the amount of \$2,300.00. The Landlord's agent indicates that total arrears from November 1, 2021 to present is \$315.32.

The Tenants continue to reside within the rental unit. The Landlord's agent confirmed they have not received an application from the Tenant disputing 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.

I have reviewed the 10-Day Notice and I find that it complies with the formal requirements of s. 52 of the *Act*. I accept that the Tenant owed rent on November 1, 2021 despite the Landlord's admission that the amount listed in the 10-Day Notice was incorrect. This error does not invalidate the notice.

When a 10-day Notice to End Tenancy 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 Tenants did neither. Given this, s. 46(5) comes into effect and the Tenants are conclusively presumed to have accepted the end of the tenancy and must have vacated the rental unit on the effective date. In this case, the effective date was October 22, 2021.

As the Tenants continue to reside within the rental unit, the Landlord has established that they are entitled to an order for possession and they shall receive that order.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

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. In the present circumstances, I accept the Landlord's undisputed evidence that rent was not paid in accordance with the Tenancy Agreement and the Tenant had no lawful reason for

withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I accept the undisputed evidence of the Landlord that as of October 31, 2021, the Tenants were in arrears in the amount of \$2,614.31 as evidenced in the rent ledger provided. I further accept that the Tenants were to pay an additional \$100.00 for parking, which is again evidenced in the rent ledger. Finally, I accept the undisputed evidence provided by the Landlord's agent that rent increased to \$1,137.23 on January 1, 2022.

The Landlord's agent advises, and I accept, that the Tenants made two rent payments after the 10-Day Notice was issued, the first on November 22, 2021 and the second on February 3, 2022 in the combined amounts of \$4,600.00. Taking these payments into account with the Tenants rent and parking fee obligations from November 1, 2021 to present, I accept that the additional rent arrears of \$315.32 has been established by the Landlord.

As the Tenants continue to occupy the rental unit, I find that the Landlord could not have mitigated their damages.

I find that the Landlord has established a monetary claim in the total amount of \$2,929.63 for unpaid rent and for parking fees, being the total arrears as of October 31, 2021 combined with the amount owed from November 1, 2021 to present.

As the Landlord was successful in their application, they are entitled to the return of their filing fee and the Tenants shall pay them the amount of \$100.00. I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit in partial satisfaction of the total amount owed by the Tenants.

Conclusion

The Tenants are conclusively presumed to have accept the end of the tenancy. As the Tenants continue to occupy the rental unit, the Landlord has established that they are entitled to an order for possession. Pursuant to s. 55 of the *Act*, I order that the Tenants provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order for possession.

I find that the Landlord has proven a monetary claim in the amount of \$2,929.63. I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlord \$100.00 for their filing fee as the Landlord was successful in their application.

I make a total monetary award to the Landlord taking the following into account:

Item	Amount
Unpaid rent and parking fees	\$2,929.63
Filing fee to be paid by the Tenants to the Landlord as ordered under s. 72(1)	\$100.00
Less the security deposit to be retained by the Landlord as directed under s. 72(2)	-\$497.50
Total	\$2,532.13

Pursuant to s. 67 of the *Act*, I order that the Tenants pay **\$2,532.13** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 25, 2022

Residential Tenancy Branch