



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The hearing was reconvened as a result of the Landlords' application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent and/or utilities pursuant to section 55; and
- authorization to recover the filing fee for their application from the Tenants pursuant to section 72.

The Tenants ("EG" and "KB") did not attend this hearing. I left the teleconference hearing connection open until 11:38 am in order to enable the Tenants to call into this teleconference hearing scheduled for 11:00 am. The two Landlords ("JS" and "SK") attended the hearing and were 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 Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference. A witness ("MS") attended the hearing when required to give testimony on behalf of the Landlords.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated January 7, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlords. As a result, this hearing was scheduled and came on for hearing on January 15, 2022, to consider the Landlords' application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Landlords were instructed to serve the NDRP, the Interim Decision and all other required documents, upon each of the

Tenants within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

SK testified the Landlords served the NDRP on each of the Tenants by registered mail on January 12, 2022. SK submitted a registered mail receipt and tracking numbers to corroborate her testimony regarding service of the NDRP on each of the two Tenants. I find each of the Tenants were served with the NDRP on January 12, 2022. Pursuant to section 90, I find the Tenants were deemed to have been served with the NDRP on January 17, 2022, being five days after its posting by the Landlords.

SK stated the Tenants did not serve any evidence on the Landlords for these proceedings.

Preliminary Matter – Amendment to Increase Claim for Unpaid Rent and/or Utilities

SK testified the Ten Day Notice dated November 5, 2021 (“10 Day Notice”) served on the Tenants stated the Tenants owed \$4,800.00 for unpaid rent and \$462.00 for unpaid utilities. SK stated the Tenants have not vacated the rental unit and that three additional months of unpaid rent have accrued since the date of the 10 Day Notice. SK requested an amendment to the Landlords’ application to increase the amount of the monetary claim for unpaid rent be increased to \$10,026.00.

Section 4.2 of the *Residential Tenancy Branch Rules of Procedure* state:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Tenants have continued occupy the rental unit after the effective date of the 10 Day Notice. I find a claim for recovery by the Landlords for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenants. Based on the above, I order that the Landlords’ application be amended to increase the monetary claim for unpaid rent to \$9,600.00 pursuant to Rule 4.2.

Issues to be Decided

Are the Landlords entitled to:

- an order of possession?
- a monetary order for unpaid rent and/or utilities?
- recover the filing fee for the Landlords' application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlords' application and my findings are set out below.

SK stated the tenancy commenced on November 7, 2020, on a month-to-month basis with rent of \$1,600.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$1,200.00 payable by November 7, 2020. SK stated the Tenants paid the security deposit. SK stated the Tenants applied \$400.00 of the deposit for rent and the Landlords are holding the balance of the deposit of \$800.00 in trust for the Tenants. SK stated the tenancy agreement provides the Tenants are to pay 40% of the utility charges for the residential property.

SK stated the Landlords served the 10 Day Notice on EG in-person on November 5, 2021. The 10 Day Notice stated the Tenants owed rental arrears of \$4,800.00 and \$462.00 for unpaid utilities as of November 1, 2021. SK stated the Tenants have not paid any rent since the date of the 10 Day Notice and the Tenants now owe a total of \$9,600.00 in rental arrears as follows:

Date	Rent Owed	Paid	Balance
01-Sep-21	\$1,600.00	\$0.00	\$1,600.00
01-Oct-21	\$1,600.00	\$0.00	\$3,200.00
01-Nov-21	\$1,600.00	\$0.00	\$4,800.00
01-Dec-21	\$1,600.00	\$0.00	\$6,400.00
01-Jan-21	\$1,600.00	\$0.00	\$8,000.00
01-Feb-21	\$1,600.00	\$0.00	\$9,600.00
Total	\$9,600.00	\$0.00	\$9,600.00

SK stated the Landlords are not aware of the Tenants making an application for dispute resolution to dispute the 10 Day Notice. SK admitted the Landlords did not send a 30-day demands to the Tenants for payment of any of the utilities charges totalling \$462.00 that the Landlords have claimed in the 10 Day Notice.

Analysis

1. Landlords' Claim for Order of Possession

Sections 46(1) and 46(4) of the Act state:

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

- (5) 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
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

The Landlords served the 10 Day Notice on the Tenants in-person on November 5, 2021. Pursuant to section 46(4) of the Act, the Tenants had until November 10, 2021, to make an application for dispute resolution to dispute the 10 Day Notice. The Tenants did not make an application for dispute resolution to dispute the 10 Day Notice. Pursuant to section 46(5)(a), the Tenants were conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The effective date for move out stated in the 10 Day Notice was November 16, 2021. However, the Tenants did not vacate the rental unit on the effective date of the 10 Day Notice and the Tenants continue to occupy the rental unit as of the date of this hearing. Pursuant to section 68(2)(1) of the Act, I order the date the tenancy ends the day of this hearing, being February 15, 2022.

Sections 55(2), 55(3) and 55(4) of the Act state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
 - (a) a notice to end the tenancy has been given by the tenant;
 - (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;

- (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
 - (a) *grant an order of possession, and*
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

[emphasis added in italics]

Based on the undisputed testimony of SK, I find the Tenants owed the Landlords \$4,800.00 for rental arrears as of the date of the 10 Day Notice. I find the Landlords have satisfied their onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(4)(a) of the Act, I order the Tenants provide the Landlords with vacant possession of the rental unit.

2. Monetary Order for Unpaid Rent:

Sections 26 of the Act state:

- 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 10 Day Notice stated the Tenants owed \$462.00 for unpaid utilities for August to October 2021. Section 46(6) of the Act states:

- (6) If
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
 - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

SK admitted the Landlords have not given the Tenants a written 30-day demand for payment of any of the utility charges the Landlords have claimed on the 10 Day Notice. Based on the above, the Landlords are not entitled to treat the utility charges of rent pursuant to section 46(6) for the purposes of the 10 Day Notice. Based on the above, I dismiss, with leave to reapply, the Landlords' claim for recovery of the \$462.00 for unpaid utility charges.

I am satisfied upon hearing the undisputed testimony of SK that an additional \$4,800.00 of rental arrears accrued for the three months after the date the 10 Day Notice was served on the Tenants. With the rental arrears of \$4,800.00 owing as of the date of the 10 Day Notice, the Tenants owes a total of \$9,600.00 in rental arrears as of the date of this hearing. Pursuant to section 55(4)(b) of the Act, I order the Tenants pay the Landlords \$9,600.00 in satisfaction of the rental arrears owed. Pursuant to section 72(2) of the Act, the Landlords may retain the security deposit in partial satisfaction of the monetary orders made above.

3. Reimbursement of Landlords' Filing Fee

As the Landlords have been successful in their application, they may recover the \$100.00 filing fee for his application from the Tenants pursuant to section 65(1) of the Act.

Conclusion:

I order the Tenants deliver vacant possession of the rental unit to the Landlords within two days of being served with a copy of this decision and attached order by the Landlords. Should the Tenants 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 order that the Tenants pay the Landlord \$8,900.00, representing the following:

Description	Amount
Rental Arrears for September 1, 2021 to February 1, 2022, inclusive	\$9,600.00
Landlord's Filing Fee for Application	\$100.00
Less Tenants' Security Deposit	-\$800.00
Total	\$8,900.00

This Monetary Order must be served by the Landlords on the Tenants and may be enforced in Provincial 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 18, 2022

Residential Tenancy Branch