



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNR-DR, OPR-DR, FFL**

Introduction

On October 18, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I find that the residential tenancy agreement submitted by the landlord is not signed by the tenant and instead is signed by Person M.N. for the tenant. I find this discrepancy in the tenancy agreement's signature raises a question that can only be addressed in a participatory hearing.

I have been delegated authority under the *Act* to consider the landlord's application for:

- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:15 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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.

The landlord attended the hearing, calling in at 9:38 a.m. The landlord testified that she personally served the tenant with the Notice of Dispute Resolution Proceedings on October 20, 2021 and by email on the same date. The landlord testified that she has sent many reminders regarding this hearing to the tenant, including by phone and email.

The landlord testified that the tenant emailed the landlord at 5:12 a.m. on the date of the hearing, stating: *"I just checked the emails right now. I'm working M to F, you know that. I don't know why you chose that time. Why can't you choose another day. Weekdays do not work for me."* Based on the evidence before me, I find the tenant duly served with the Notice of Dispute Resolution Proceedings package on October 20, 2021 pursuant to sections 89 and 90 of the Act.

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Person M.N. on behalf of the tenant on April 3, 2021, indicating a monthly rent of \$3,150.00, due on the first day of each month for a tenancy commencing on May 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 2, 2021, for \$4,800.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 12, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 5:00 pm on September 2, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy
- A copy of her bank statements showing rent payments from the tenant

To address the adjudicator's concerns regarding the tenant's missing signature on the tenancy agreement: the landlord testified that the tenant was residing in a different city at the time of entering the tenancy and that the tenant's sister signed the tenancy agreement on the tenant's behalf while the tenant was present at the signing via video conference. The signing of the tenancy agreement by the tenant's sister on the tenant's behalf was witnessed by the landlord and the landlord's father.

The landlord testified that the tenant was short \$1,650.00 of the \$3,150.00 rent for August 2021. On September 1st, the tenant didn't pay any of her rent, leaving arrears in the amount of \$4,800.00 by September 2nd.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting it to the tenant's door on September 2, 2021. The landlord acknowledges receiving payments of \$3,000.00 and \$400.00 on September 22 and September 23rd, however by the end of September, the tenant was still short \$1,400.00 in rent.

The tenant fully paid October's rent.

On November 19, the tenant paid \$3,100 of the rent, leaving a shortfall of \$50.00 for November.

On December 20, the tenant paid \$2,600.00, leaving a shortfall of \$550.00 for December.

On January 20, the tenant paid \$2,900.00, leaving a shortfall of \$250.00 for January. The tenant did not pay February rent at all.

The landlord seeks to amend her monetary claim to include rent for the additional months.

Analysis

First, I find the tenant's sister acted in the capacity of the tenant's agent and signed the tenancy agreement on behalf of the tenant. Consequently, I find there was a valid tenancy agreement entered into by the landlord and the tenant. As such, the rights, obligations and prohibitions established under the Act are enforceable between the landlord and the tenant under the tenancy agreement, pursuant to section 6 of the Act.

Section 55(2)(b) of the *Act* states:

A landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the tenant, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Section 55(4) states:

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.

I deem the tenant sufficiently served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on September 5, 2021, three days after September 2nd, the day it was posted to the tenant's door, pursuant to sections 88 and 90 of the *Act*. The tenant did not make an application to dispute the notice to end tenancy within the five days as required under section 46(4) of the *Act*, and I grant the landlord an Order of Possession in accordance with section 55(4). As the effective date shown on the landlord's notice to end tenancy has passed, I grant the landlord an Order of Possession effective two days after service upon the tenant.

I find the tenant was required to pay monthly rent in the amount of \$3,150.00 and failed to do so. Pursuant to Rule 4.2 of the Rules of Procedure, I allow the landlord to amend her application for dispute resolution seeking additional rent as it could be reasonably anticipated by the tenant. Based on the undisputed testimony of the landlord and the evidence provided by the landlord, I award the landlord the following:

Item	Amount
August and September 2021 arrears	\$1,400.00
November 2021 arrears	\$50.00
December 2021 arrears	\$550.00
January 2022 arrears	\$250.00
February 2022 arrears to date of decision	\$2,025.00
Total	\$4,275.00

February's arrears were pro-rated as [$\$3,150.00 / 28 \text{ (days)} \times 18 \text{ days} = \$2,025.00$].

The landlord is also entitled to recover the \$100.00 filing fee for cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$1,575.00 as noted on the tenancy agreement. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit in partial satisfaction of the monetary award.

Item	Amount
Outstanding rent and arrears	\$4,275.00
Filing fee	\$100.00
Less security deposit	(\$1,575.00)
Total	\$2,800.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$2,800.00**. 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.

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