



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on March 21, 2022. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based off of a 10 Day Notice to End Tenancy (the Notice) for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord and one of the Tenants attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. A copy of the registered mail tracking information was provided into evidence, showing these packages were delivered to the Tenants on December 15, 2021. I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

The Tenant was asked how he served his evidence and he stated it was on USB stick, and that it was delivered to the Landlord in person sometime in January. The Landlord was initially unclear about what he received and when, but clarified that he did not receive any USB drive relating to this proceeding. The Tenant did not provide any further proof of service to corroborate what was served, how, and when. Without further proof of service, I find there is insufficient evidence to show the Tenant served the Landlord with his digital evidence (USB). As this evidence has not been sufficiently served to the Landlord, I find it is not admissible for this proceeding.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord is requesting to amend his application to include rent that has accrued since the original application date (for October 2017). I turn to the following Rules of Procedure (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.

In consideration of this, I allow the Landlord to amend this application to include rent that has accrued since the original application date.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord provided two copies of the tenancy agreement. One of the tenancy agreements is not signed by all parties, but the tenancy agreement signed by all parties states that the tenancy began on October 15, 2020, and that monthly rent was \$1,100.00, due on the first of the month. The signed tenancy agreement shows that the Tenants paid a security deposit of \$600.00.

The Landlord testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) by taping it to the door of the rental unit on September 15, 2021. The Landlord listed that the amount owing at that time was \$6,900.00. The Landlord explained that the Tenant only paid partial amounts in early 2021, and stopped paying rent completely in May 2021. The Landlord stated that he has not received any rent since issuing the Notice in September, and the tenancy needs to end. The Landlord provided a detailed breakdown of payments that were made, in his attached worksheet. This worksheet specifies that rent was paid, as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
January 1, 2021	Rent	\$1,100.00	\$1,050.00	\$50.00
February 1, 2021	Rent	\$1,100.00	\$1,000.00	\$150.00
March 1, 2021	Rent	\$1,100.00		\$1,250.00
April 1, 2021	Rent	\$1,100.00		\$2,350.00
May 1, 2021	Rent	\$1,100.00	\$950.00	\$2,500.00
June 1, 2021	Rent	\$1,100.00		\$3,600.00
July 1, 2021	Rent	\$1,100.00		\$4,700.00
August 1, 2021	Rent	\$1,100.00		\$5,800.00
September 1, 2021	Rent	\$1,100.00		\$6,900.00
October 1, 2021	Rent	\$1,100.00		\$8,000.00
November 1, 2021	Rent	\$1,100.00		\$9,100.00
December 1, 2021	Rent	\$1,100.00		\$10,200.00
January 1, 2022	Rent	\$1,100.00		\$11,300.00
February 1, 2022	Rent	\$1,100.00		\$12,400.00
March 1, 2022	Rent	\$1,100.00		\$13,500.00
Total Accrued Balance				\$13,500.00

The Tenant acknowledged that rent was initially set at \$1,100.00 and was due on the first of the month, as laid out in the tenancy agreement. However, he stated that he had a verbal agreement with the Landlord whereby he only had to pay \$800.00 per month, starting in June 2021. The Tenant stated that this was later changed to \$900.00 per month. The Tenant did not provide any evidence to corroborate this modified rental amount. The Landlord denies that rent was reduced.

The Tenant stated that he always puts his rent, in cash, under the Landlord's front door. The Tenant was asked to clarify what he paid and when, and he provided a scattered and unclear explanation as to what was paid and when. The Tenant did not provide any corroborating evidence regarding the amount and timing of his rent payments, although he loosely referred to videos he took.

The witness present for the Landlord stated that she lives next door overlooking the property, and she has noticed that the Tenant was away for work for at least the last couple months, and there has been no traffic coming and going. She asserts it would be impossible that the Tenant was able to put his cash under the Landlord's front door if he wasn't even in town. The Tenant asserts he had a friend put the cash under the door, but did not elaborate any further on the specifics.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

First, I will address the issue regarding how much monthly rent was, and is. The tenancy agreement provided into evidence, which was signed by both parties shows that monthly rent is \$1,100.00, and is due on the first of the month. I find there is insufficient evidence showing this was ever amended or that an agreement was made, in writing, for a different amount of rent. I find monthly rent was, and is, \$1,100.00, and is due on the first of the month, as laid out in the tenancy agreement.

Next, I turn to the Notice issued by the Landlord. I note the Tenant acknowledged receipt of the Notice on September 15, 2021. A copy of this Notice was provided into evidence, which shows that \$6,900.00 was outstanding at the time the Notice was issued. The Tenant asserts he paid rent in full, each month, by sliding his cash under the Landlord's door. In contrast to this, the Landlord stated that rent has not been received in many months, and the Tenant has not even attempted to pay rent since last May 2021. I note the Landlord's witness stated she resides next to the property, and has clear view of the rental unit and the property. She testified that she has seen that the Tenant has been away for the past couple of months, and there has been no sign of anyone at the rental unit. The Tenant stated he had a friend come, while he was away, to put his rent under the Landlord's door. However, he provided no corroborating evidence to support he withdrew the money, or that he had someone else pay these amounts, in cash, on his behalf. When weighing these two versions of events, I find the Landlord has provided a more detailed and compelling explanation regarding the Tenant being absent for a couple of months without attempting, or having someone else attempt on his behalf, to pay rent each month. I find it more likely than not that the Tenant failed to pay rent while he was away for the past couple of months.

Further, with respect to the payment of rent, dating back to January 2021, I find the Landlord has again provided significantly more detail and a compelling account of what is owed, and how the amounts were calculated. I found the Tenants explanation as to what he paid, and when, lacked clarity and detail overall. As such, I have placed more weight on the Landlord's version of events, and I find it more likely than not that the Tenant failed to pay rent, as detailed on the Landlord's worksheet and his testimony (as laid out above in the chart).

In this case, I find that the tenant owed \$6,900.00 in past due rent at the time the Notice was issued on September 15, 2021. I find the Tenant received the Notice on September 15, 2021, the same day he located it on his front door.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence showing that the Tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice, September 28, 2021. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay \$13,500.00 in past due rent.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the tenant to repay the \$100.00 fee paid to make the application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$13,500.00
Other:	
Filing fee	\$100.00

Less:	
Security Deposit currently held by Landlord	(\$600.00)
TOTAL:	\$13,000.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$13,000.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 21, 2022

Residential Tenancy Branch