



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MetCap Living Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for Unpaid Rent pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent from the Tenant's security deposit pursuant to Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's paralegal, LM, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. 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 LM and I were the only ones who had called into this teleconference. LM was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised LM that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. LM testified that she was not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by leaving a copy in the mailbox on October 7, 2021 (the "10 Day Notice"). The Landlord uploaded a proof of service for this notice. I find that the 10 Day

Notice was deemed served on the Tenant on October 10, 2021 pursuant to Sections 88(f) and 90(d) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenant via Canada Post Xpresspost on November 17, 2021 (the “NoDRP package”). LM referred me to the Canada Post Xpresspost tracking number as proof of service. I noted the Canada Post Xpresspost tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package five days after mailing them, on November 22, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

At the outset of the hearing, the Landlord testified that the Tenant moved out of the rental unit on December 28, 2021 and she no longer needs an Order of Possession. I find, based on LM’s testimony, that this part of the Landlord’s application is dismissed as the Tenant no longer resides in the rental unit.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

LM testified that this tenancy began as a fixed term tenancy on March 1, 2021, ending on February 28, 2022. Monthly rent is \$1,199.50 payable on the first day of each month. A security deposit of \$599.00 was collected at the start of the tenancy but when the Tenant moved out the Landlord returned the security deposit.

The reason in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$1,424.50 in outstanding rent. The effective date of the 10 Day Notice was October 22, 2021.

LM provided a rent ledger in her documentary evidence. The total outstanding rent in this matter follows:

RENT	Rent Owing	NSF Charge	Rent/Partial Amount Paid	O/S Rent Total
March 2021	\$1,199.50		\$1,199.50	\$0.00
April 2021	\$1,199.50	\$25.00	\$1,224.50	\$0.00
May 2021	\$1,199.50		\$1,199.50	\$0.00
June 2021	\$1,199.50		\$1,199.50	\$0.00
July 2021	\$1,199.50	\$25.00	\$1,200.00	\$24.50
August 2021	\$1,199.50		\$1,199.50	\$24.50
September 2021	\$1,199.50	\$75.00	\$999.00	\$300.00
October 2021	\$1,199.50	\$25.00		\$1,524.50
November 2021	\$1,199.50	\$25.00		\$2,749.00
December 2021	\$1,199.50	\$25.00	\$2,850.00	\$1,123.50
**Returned Security Deposit:			\$599.00	\$524.50
TOTAL OUTSTANDING RENT:				\$524.50

The Landlord is seeking a Monetary Order for \$524.50 for the outstanding rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. As this hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, all the Landlord's testimony is undisputed.

Section 26(1) of the Act states 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.

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

- 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].*
- ...
- (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.*

The Landlord's 10 Day Notice was deemed served on October 10, 2021. The Tenant neither paid the outstanding rent, nor applied for dispute resolution. I find the 10 Day Notice submitted into documentary evidence complies with the form and content requirements of Section 52 of the Act. I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice pursuant to Section 46(5) of the Act. Accordingly, on a balance of probabilities, the Landlord has proven that this tenancy must end due to unpaid rent and I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to a Monetary Order for the unpaid rent. Section 55(2) of the Act reads as follows:

- 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:*
- ...
- (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;*
- ...

- (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.*

The Landlord sought an Order of Possession when they originally filed for dispute resolution. Because the Tenant moved out of the rental unit on December 28, 2021, the Landlord no longer needs this Order. As this application was in relation to the non-payment of rent, the Landlord is seeking a Monetary Order for the outstanding rent amount. I find that based on the Landlord's undisputed testimony of when rent was owing, and what rent was paid, and based on the conclusive presumption that the tenancy has ended, it is the Landlord's right to seek a Monetary Order for the outstanding rent amount. I find the outstanding rent is \$524.50. The Landlord already returned the security deposit, so pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$624.50 which includes recovery of the application filing fee as the Landlord is successful in their dispute resolution claim. The Monetary Award has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$524.50
Plus filing fee:	\$100.00
TOTAL OWING:	\$624.50

Conclusion

I grant the Landlord a Monetary Order in the amount of \$624.50, and 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 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 Act.

Dated: March 02, 2022

Residential Tenancy Branch