



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 a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent and the Landlord is still holding the 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 Legal Administrator, LS, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant 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 LS and I were the only ones who had called into this teleconference. LS was given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlord served the Tenant with the 10 Day Notice by leaving a copy in a mailbox or mail slot at the address where the Tenant lives on November 4, 2021. The Landlord provided a Proof of Service #RTB-34 form for service of the 10 Day Notice. I find that the 10 Day Notice was deemed served on the Tenant on November 7, 2021 pursuant to Sections 88(f) and 90(d) of the Act.

The Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package for this hearing on December 14, 2021 by Canada Post registered mail (the "NoDRP package"). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package on December 19, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. 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.

LS confirmed that this tenancy began as a fixed term tenancy on June 1, 2019. The fixed term ended on May 31, 2020, then the tenancy continued on a month-to-month basis. Monthly rent was \$750.00 plus \$20.00 for parking in 2021, and in January 2022 with a rent increase, monthly rent is \$761.25 plus \$20.00 for parking payable on the first day of each month. A security deposit of \$375.00 was first collected at the start of the tenancy and was later increased to \$425.00 which is still held by the Landlord.

The reasons in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$758.75 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 19, 2021.

LS provided the Landlord's lease ledger which sets out when rent was owing, and when rent payments were made. The following is the rent payment history:

RENT	Rent & Parking Owing	Rent/Partial Amount Paid	O/S Rent Total
November 2021	\$770.00	\$0.00	\$770.00
December 2021	\$770.00	\$0.00	\$1,540.00
December 2, 2021		\$770.00	\$770.00
January 2022	\$781.25	\$0.00	\$1,551.25
January 3, 2022		\$790.00	\$761.25
February 2022	\$781.25	\$850.00	\$692.50
March 2022	\$781.25	\$0.00	\$1,473.75
March 4, 2022		\$781.25	\$692.50

The Landlord is seeking an Order of Possession for unpaid rent, and a Monetary Order for the outstanding rent amount of \$692.50.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

For the Tenant's benefit, Section 26(1) of the Act sets out the rules about paying rent, it states:

Rules about payment and non-payment of rent

- 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.*

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].*
- ...
- (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.*

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Pursuant to Section 26(1) of the Act, the Tenant is required to pay rent when it is due whether or not the Landlord complies with this Act, the regulations or the tenancy agreement.

After receiving the 10 Day Notice, the Tenant had five days to pay the outstanding rent or apply for dispute resolution. The Tenant did neither of these steps. The Tenant has paid some amounts towards his outstanding rent, but did not pay the November 2021 rent within the 5 days after receiving the 10 Day Notice. Rental payments have been late since then. The Tenant did not attend the hearing to provide evidence as to why his rental payments have been late, accordingly, on a balance of probabilities, I find pursuant to Section 46(5)(a) of the Act, that the Tenant is conclusively presumed to have accepted that the tenancy has ended and must vacate the rental unit. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order. Sections 55(2) and 55(4) of the Act read as follows:

Order of possession for the landlord

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 Tenant did not apply for dispute resolution, and the time to apply has expired. I have upheld the Landlord's 10 Day Notice and I find the total outstanding rent is \$692.50. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act and is entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. Further, pursuant to Section 72(2)(b) of the Act, I Order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. Having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$692.50
Less security deposit:	-\$425.00
Plus Application Filing Fee	\$100.00
TOTAL OWING:	\$367.50

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$367.50. 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 30, 2022

Residential Tenancy Branch