



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: MNRL-S, OPR, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 14, 2021, in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed. Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that 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.

During the hearing the landlord provided that the current outstanding balance of rental arrears is \$6,651.25, which is an increase from their original claim of \$2,400.00 made on their original Application for Dispute. As these arrears are all based on the non-payment of rent, I find it is reasonable that the increased claim would be pursued by the landlord. As such, I allow the landlord to amend their claim to increase it to \$6,621.25.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on January 17, 2020 for a one year and one day fixed term tenancy beginning on February 1, 2020 that converted to a month to month tenancy on February 2, 2021 for the monthly rent of \$2,250.00 due on the 1st of each month and a security deposit of \$1,125.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 4, 2021 with an effective vacancy date of November 19, 2021 due to \$2,350.00 in unpaid rent.

Testimony and documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of November 2021 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving a copy in a mailbox or mail slot at the address where the person resides on November 4, 2021.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submits the tenant did not pay the rent in full and there is no evidence before that the tenant applied to dispute the Notice to End Tenancy within five days.

The landlord testified that rent increased from \$2,250.00 to \$2,283.75 effective January 1, 2022 and that despite the Notice to End Tenancy the tenants still remain in the rental unit and have made the following 3 payments towards rent as follows: in January 2022 a payment of \$2,500.00 was made; in February 2022 a payment of \$1,200.00 was made; and in March 2022 a payment of \$1,000.00 was made.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on November 7, 2021 and the effective date of the notice was November 19, 2021. I accept the evidence before me that the tenants failed to pay the rent owed in full or submit an Application for Dispute Resolution

seeking to cancel the Notice to End Tenancy within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I am satisfied the landlord has provided sufficient evidence to establish the tenants have failed to pay the full rent for the months of November and December 2021 and the months of January, February, and March 2022 for a total amount of \$6,651.25 owed.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$6,751.25** comprised of \$6,651.25 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,125.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$5,626.25**. This order must be served on the tenants. If the tenants fail 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