



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:36 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. Agent for the landlord MC and counsel VS attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 agent MC, counsel VS and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the MC's testimony that the tenant was served with the application and evidence (the materials) by registered mail on November 28, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on December 03, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – named applicant

The notice of hearing indicates that MC is an agent for the applicant landlord. MC affirmed the landlord is his daughter PC and that he represents her in this application. MC stated the tenant is aware that he represents landlord PC.

PC's address for service is the same address provided in the application for MC. The Notice lists the landlord is PC.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to list landlord PC (the landlord) as the applicant, represented by agent MC.

Preliminary Issue – amendment of monetary claim

At the hearing the agent MC sought to amend the application for \$3,075.00 in unpaid rent to include an additional \$10,225.00 for the unpaid rent of November and December 2021, January, February and March 2022 and to include an additional \$1,330.00 for unpaid utilities.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$13,300.00. I find that the claim for unpaid utilities should not have been reasonably anticipated by the tenant. I deny the request to amend the monetary claim for unpaid utilities.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Agent MC testified the tenancy started on January 01, 2020. Monthly rent is \$2,050.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$1,025.00 was collected and the landlord holds it in trust.

Agent MC said he served the Notice by attaching it to the rental unit's door on October 05, 2021.

Agent MC submitted into evidence a copy of the October 02, 2021 Notice. It indicates the tenant did not pay rent in the amount of \$2,050.00 due on October 01, 2021. The effective date is October 12, 2021.

Agent MC testified the tenant paid \$1,050.00 for September 2021 rent in September and did not pay rent after September 2021. The tenant continues to occupy the rental unit.

The landlord is claiming \$1,000.00 in unpaid rent for September 2021 and \$2,050.00 per month for October, November and December 2021, January, February and March 2022.

Agent MC submitted a letter signed by the landlord: "The current tenant has not been paying rent, since last September 2021."

Agent MC submitted a direct request worksheet.

The landlord is claiming compensation in the total amount of \$13,300.00.

Analysis

I accept the uncontested testimony that Agent MC served the Notice on October 05, 2021 in accordance with section 88(g) of the Act. Per section 90(c) of the Act, the tenant is deemed to have received the Notice on October 08, 2021.

Order of possession

Based on the MC's convincing testimony and the landlord's letter, I find that the landlord and the tenant agreed to a tenancy and the tenant is obligated to pay the monthly rent in the amount of \$2,050.00 on the first day of each month.

Pursuant to section 46(1) of the Act, 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.

Based on the MC's convincing testimony and the landlord's letter, I find the tenant has not paid the balance of September rent, October, November, December 2021, January, February and March 2022 rent.

Pursuant to section 53(2) of the Act, the effective date of the Notice is automatically corrected to October 18, 2021. Otherwise, I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord's agent, gives the address of the rental unit, states the ground to end tenancy and the effective date and is in the approved form.

Section 68(2) of the Act states:

- (2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,
 - (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

Based on the above, as the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, March 16, 2022, per section 44(1)(a)(ii) and 68(2) of the Act.

I award the landlord an order of possession, per section 55(2)(b) of the Act.

Monetary order

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Section 57(3) of the Act states: “A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.”

Based on the MC’s undisputed testimony, the Notice, the direct request worksheet and the landlord’s letter, I find the tenant did not pay the rent in accordance with section 26(1) of the Act.

Per section 26(1) of the Act, I award the landlord the balance of September rent in the amount of \$1,00.00, October, November, December 2021, January and February rent in the amount of \$2,050 per month and *per diem* rent from March 01 to March 16, 2022 (the date of this decision) rent in the amount of \$1,093.33 ($\$2,050.00 / 30 \times 16$ days).

The landlord is at liberty to apply for compensation for overholding tenant.

Filing fee and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$1,025.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent September 2021	1,000.00
Unpaid rent October 2021 to February 2022 (2,050.00 x 5)	10,250.00
Unpaid rent March 01 to 16, 2022	1,093.33
Filing fee	100.00
Subtotal	12,443.33
Deposit (minus)	1,025.00
Total:	11,418.33

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenants. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$1,025.00 deposit and award the landlord \$11,418.33. The landlord is provided with this order in the above terms 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 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: March 16, 2022

Residential Tenancy Branch