



Dispute Resolution Services

Page: 1

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

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

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security and pet deposits (the deposits), under section 38;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:02 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. Landlord MetCap Living Management Inc. (the landlord), represented by agent LM, attended the hearing and was 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 the LM and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands 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 LM's testimony that the tenants were served with the application and evidence (the materials) by registered mail on December 14, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are 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 tenants are deemed to have received the materials on December 19, 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 respondents.

Preliminary Issue – Amendment of monetary claim

At the hearing LM sought to amend the application for \$2,127.00 in unpaid rent to include an additional \$511.25 for the balance of unpaid rent of December 2021, January, February and March 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. 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 \$2,638.25.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. a monetary order for unpaid rent?
3. an authorization to retain the deposits?
4. 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 party, 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 party; it is the landlord's obligation to present the evidence to substantiate the application.

LM affirmed the tenancy started on November 01, 2020. Monthly rent is \$862.76, due on the first day of the month. At the outset of the tenancy a security deposit of \$425.00 and a pet damage deposit of \$425.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence. It indicates the landlord is "NPR GP Inc., general partner for NPR Limited Partnership" (NPR).

LM affirmed MetCap Living Management Inc. represents NPR.

LM mailed the Notice to the rental unit's address on November 04, 2021. LM submitted into evidence two proof of service (RTB34) indicating the Notice was served on November 04, 2021.

LM submitted a copy of the November 04, 2021 Notice. It indicates the tenants did not pay rent in the amount of \$1,277.50 due on November 01, 2021. The effective date is November 19, 2021.

LM submitted into evidence a ledger dated December 01, 2021 and affirmed that the tenants could access to the ledger. The ledger indicates the tenants had a balance of \$1,277.50 on November 01, 2021 for November 2021 rent and the balance of October 2021 rent.

LM affirmed that rent was \$850.00 until December 31, 2021 and it increased to \$862.75 on January 01, 2022.

LM affirmed the tenants paid \$2,077.50 on December 16, 2021 and continue to occupy the rental unit. The balance for December 2021 rent is \$50.00 and for January, February and March 2022 rent is \$2,588.25.

The landlord is claiming for an order of possession and the balance of December 2021 rent, January, February and March 2022 rent in the total amount of \$2,638.25.

The landlord submitted a monetary order worksheet into evidence.

Analysis

The Act defines landlord as

The owner of a rental unit, the owner's agent or another person who, on behalf of the landlord,
(i)permits occupation of the rental unit under a tenancy agreement, or
(ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Based on LM's convincing testimony and the tenancy agreement, I find that the landlord is the owner's agent in this tenancy and application.

I accept the uncontested testimony that LM served the Notice on November 04, 2021 in accordance with section 88(c) of the Act. Per section 90(a) of the Act, the tenants are deemed to have received the Notice on November 09, 2021.

Order of possession

Based on the LM's convincing testimony and the tenancy agreement, I find that the landlord and the tenants agreed to a tenancy and the tenant was obligated to pay the monthly rent in the amount of \$850.00 on the first day of each month until December 2021 and \$862.75 since January 2022.

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 LM's convincing testimony, the Notice, the ledger and the monetary order worksheet, I find the tenants have not paid the balance of December 2021 rent in the amount of \$50.00 and January, February and March 2022 rent in the amount of \$862.75 per month.

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 it 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 tenants are currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(a)(ii) and 68(2)(a) 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 LM’s undisputed testimony, the Notice and the ledger, I find the tenants 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 December 2021 rent in the amount of \$50.00, January and February 2022 rent in the amount of \$862.50 per month and *per diem* rent from March 01 to 22, 2022 (the date of this decision) in the amount of \$632.50 ($\$862.50/30 \times 22$ days).

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

Filing fee, deposit and summary

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

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 \$850.00 deposits in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent December 2021	50.00
Unpaid rent January and February 2022 ($\$862.50 \times 2$)	1,725.00
Unpaid rent March 01 to 22, 2022	632.50
Filing fee	100.00
Subtotal	2,507.50

Deposits (minus)	850.00
Total:	1,657.50

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 tenants 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 \$850.00 deposits and award the landlord \$1,657.50. The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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 22, 2022

Residential Tenancy Branch