



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

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied on January 10, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 6, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, noting that the Landlord holds the security deposit; and
- the filing fee.

The hearing began at 9:30 a.m., and was attended by the Landlord, not the Tenants. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified that the Notice of Dispute Resolution Proceeding and evidence was served on each of the Tenants on January 21, 2022 by registered mail, and provided two tracking numbers, as noted on the cover page of this decision. Having checked the tracking numbers, I find the Landlord's documents served on the Tenants on January 21, 2022, in accordance with section 89 of the Act, and deem the documents received by the Tenants on January 26, 2022, in accordance with section 90.

The Landlord also submitted as evidence an updated ledger, dated March 20, 2022, which the Landlord stated was sent to the Tenants by regular mail on the same date. I find the March 20, 2022 evidence sufficiently served on the Tenants on the same date in accordance with section 71 of the Act, and deem it received by the Tenants on March 25, 2022 in accordance with section 90.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to the filing fee?

Background and Evidence

The Landlord provided the following particulars regarding the tenancy. It began March 1, 2021; rent is \$2,660.00, due on the first of the month; and the Tenants paid a security deposit of \$1,235.00, which the Landlord still holds.

The Landlord testified that the “rent” of \$2,660.00 is comprised of:

- \$2,470.00 for rent;
- \$150.00 for parking; and
- \$40.00 for storage.

A copy of the tenancy agreement is submitted as evidence. As page 2 of the tenancy agreement notes that rent is \$2,470.00, in the rest of this decision, “rent” will refer to \$2,470.00. Page 2 of the tenancy agreement notes that parking and storage are not included in the rent. The tenancy agreement states that there is a 16-page addendum, with 52 additional terms, but only one page of the addendum is submitted as evidence; it contains terms 18–21.

The Landlord testified that the Tenants still occupy the rental unit.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified that the 10 Day Notice was served on the Tenants by regular mail on December 6, 2021, and provided signed proof of service forms.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants failed to pay rent in the amount of \$1,960.00 due on December 1, 2021.

The Landlord submitted as evidence ledger copies, showing the amounts charged and paid, inclusive of March 1, 2022.

The Landlord testified that the Tenants owe additional rent as follows:

Month	Monthly Rent	Rent Paid	Monthly Balance Owing
December 2021	\$2,470.00	\$1,700.00	\$770.00
January 2022	\$2,470.00	\$2,470.00	\$0.00
February 2022	\$2,470.00	\$900.00	\$1,570.00
March 2022	\$2,470.00	\$2,470.00	\$0.00
April 2022	\$2,470.00	\$2,470.00	\$0.00
Total rent owing			\$2,340.00

In accordance with section 64(3)(c), I amend the Landlord's application to include the outstanding rent for February 2022.

The Landlord testified that the Tenants owe additional amounts for parking and storage.

According to the ledger submitted March 20, 2022, on January 10, 2022, the Landlord charged the Tenants \$100.00 for "Dispute Resolution." As noted at the beginning of this decision, the Landlords applied for dispute resolution on January 10, 2022.

Analysis

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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (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.

Based on the Landlord's affirmed undisputed testimony and documentary evidence, I find the Landlord served the 10 Day Notice on the Tenants by regular mail on December 6, 2021 in accordance with section 88 of the Act.

I find that the Tenants did not file an application for dispute resolution within 5 days of December 6, 2021, the timeline granted under section 46(4) of the Act. Accordingly, I find that the Tenants are conclusively presumed under section 46(5) to have accepted that the tenancy ended and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession.

As the Landlord has indicated the Tenants still occupy the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, April 8, 2022.

Based on the Landlord's affirmed testimony and undisputed evidence, I find the Tenants owe unpaid rent for December 2021 and February 2022, in the amount of \$2,340.00, which they must pay the Landlord, pursuant to section 55(4) of the Act.

[Rule of Procedure 6.2](#) states that what will be considered at a dispute resolution hearing is limited to matters claimed on the application. The Landlord applied to recover money for unpaid rent, not for parking and storage. The tenancy agreement notes that parking and storage are not included in the rent. Therefore, I make no finding regarding fees for parking and storage, and the Landlord is at liberty to apply for the same.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords are successful in their application, ordinarily I would order the Tenants to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution. However, as the Landlord has previously charged the Tenants \$100.00 for dispute resolution, as indicated by the ledger, I decline to award the Landlords this amount.

In accordance with section 72 of the Act, I allow the Landlord to retain \$1,235.00 of the Tenants' security deposit in partial satisfaction of the \$2,340.00 owed.

Therefore, I find the Landlord is entitled to a monetary order for \$1,105.00.

I bring the attention of the parties to section 7 of the regulations:

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

During the hearing, the Landlord did not indicate that the tenancy agreement provides that the Landlord may charge a tenant for dispute resolution.

Further, a landlord is not entitled to charge a tenant a fee for dispute resolution, then claim for the same fee in an application for dispute resolution.

To avoid any future appearance of impropriety, I would strongly encourage the Landlord to immediately review their practices around charging tenants for dispute resolution, and applying for the filing fee in an application for dispute resolution.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,105.00. The monetary order must be served on the Tenants. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 12, 2022

Residential Tenancy Branch