



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPR, 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 pursuant to Sections 26, 46 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 Agent and Property Manager, AR and DC, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants 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 the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlord served the Tenants with the 10 Day Notice on January 12, 2022 by posting the notice on the Tenants' door. The Landlord provided a Proof of Service #RTB-34 confirming service of the 10 Day Notice by attaching a copy on the door or

other conspicuous place. I find the 10 Day Notice was deemed served on the Tenants on January 15, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenants by posting the notice on their door on February 10, 2022 (the “NoDRP package”). The Landlord provided a Proof of Service #RTB-34 confirming service of the 10 Day Notice by attaching a copy on the door or other conspicuous place. I find that the Tenants were deemed served with the NoDRP package for this hearing on February 13, 2022 in accordance with Sections 89(2)(d) and 90(c) of the Act.

Preliminary Matter

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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. On this basis, I accept the Landlord’s request to amend their original application from \$2,450.00 to \$3,650.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for a 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.

The Landlord confirmed that this periodic tenancy began on July 1, 2021. Monthly rent is \$1,200.00 payable on the first day of each month. A security deposit of \$250.00 and a

pet damage deposit of \$250.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$2,450.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was January 23, 2022.

The Landlord provided testimony and documentary evidence of a rent payment history for the Tenants as follows:

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
November 2021	\$1,200.00	\$1,150.00	\$50.00
December 2021	\$1,200.00	\$0.00	\$1,250.00
January 2022	\$1,200.00	\$0.00	\$2,450.00
January 13, 2022		\$1,200.00	\$1,250.00
February 2022	\$1,200.00	\$600.00	\$1,850.00
March 2022	\$1,200.00		\$3,050.00
April 2022	\$1,200.00	\$600.00	\$3,650.00

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$3,650.00.

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 Rules of Procedure 7.3, in the Tenants' 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.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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].*
- ...
- (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.*
- ...

The Tenants were deemed served with the 10 Day Notice on January 15, 2022. The 10 Day Notice complied in form and content pursuant to Section 52 of the Act. The Tenants did not apply for dispute resolution, therefore, pursuant to Section 46(5)(a) of the Act, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was January 23, 2022. The Tenants did not attend this hearing to give evidence about the outstanding rent amount although provided notice of this hearing date. 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. Section 55 of the Act reads 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 Tenants did not dispute the 10 Day Notice by making an application for dispute resolution and, I find, the time for making that application has expired. I have upheld the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act which will be effective two (2) days after service on the Tenants. The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. The total outstanding rent is \$3,650.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security and pet damage deposits held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in their claim, I grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$3,650.00
Less security deposit:	-\$250.00
Less pet damage deposit:	-\$250.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$3,250.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants 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 \$3,250.00. The Tenants must be served with this Order as soon as possible. Should the Tenants 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: April 28, 2022

Residential Tenancy Branch