



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNU-DR, OPU-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and their agent attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord, their agent, and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenants were personally served with a copy of the dispute resolution hearing package ('Application') and evidence on February 8, 2022. In accordance with sections 88 and 89 of the *Act*, I find that the tenant deemed served with the Application and evidence on December 17, 2019, five days after mailing. The tenants did not submit any written evidence for this hearing.

The landlord testified that the tenants were personally served with the 10 Day Notice on November 1, 2021. In accordance with section 88 the *Act*, I find the 10 Day Notice duly served on November 1, 2021.

Preliminary Issue –Amendment to Landlord’s Monetary Claims

The landlord requested to amend their original application to include additional rent and utility payments that have accrued since their application was filed.

The landlord testified that the tenants now owe \$9,300.00 in outstanding rent, and \$676.00 in outstanding utilities. The landlord testified that on February 8, 2022, the tenants were served with a demand letter for the additional utilities that have accrued.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

No amendments were received in accordance with RTB Rule 4.6. These rules ensure that a respondent is aware of the scope of the hearing and are prepared to respond, if they chose to do so. While the tenants may have been served with the demand for utilities on February 8, 2022, the tenants were not formally served with any amendments, nor have any amendments been filed with the RTB. Accordingly, the landlord’s request to amend their application to include the additional unpaid utilities is denied.

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. On this basis, I have accepted the landlord’s request to amend their original application \$9,300.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This fixed-term tenancy began on January 1, 2021, and continued on a month-to-month basis after January 1, 2022. Monthly rent is currently set at \$3,200.00, payable on the first of the month. The tenants paid a security deposit in the amount of \$1,600.00, which the landlord still holds.

The landlord served the tenants with a 10 Day Notice for unpaid rent on November 1, 2021 for failing to pay the outstanding rent and utilities. The landlord testified that since the 10 Day Notice was served, the tenants made a payment of \$1,920.00 on November 10, 2021, but failed to pay the outstanding balance. The landlord testified that the tenants made subsequent partial instalments after that date, but have never paid the entire outstanding rent or utilities. The landlord testified that as of the hearing date, the tenants owe \$9,300.00 in outstanding rent plus the original \$387.44 owed for utilities. The landlord testified that they had to serve the tenants with an additional demand for unpaid utilities on February 8, 2022.

The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent and utilities, and recovery of the filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the outstanding rent in full within five days of being served with the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on November 10, 2021, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by November 10, 2021.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

I note that the landlords had served the tenants with the 10 Day Notice on November 1, 2021 rather than November 2, 2021, and the November 2021 rent was therefore not yet past due. Although I find that the amount of outstanding rent on the 10 Day Notice is therefore incorrect, I find that the 10 Day Notice is still compliant with section 52 of the *Act*. In considering whether the landlord had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the *Act*, which states that “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.”, I find that the tenants did owe outstanding rent at the time the 10 Day Notice was issued.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form. I find that the 10 Day Notice is therefore still valid despite the fact that the November 2021 rent was included in the outstanding amount indicated on the 10 Day Notice. As noted above, the tenants did not attempt to make any payments on the outstanding rent until November 10, 2021.

As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the tenants have failed to pay \$9,300.00 in unpaid rent, and \$387.44 in unpaid utilities. I find that the tenants did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent or utilities. I, therefore, grant the landlord's application for \$9,687.44. I

As the landlord was successful in their claim, I allow the landlord to recover the \$100.00 filing fee for their application.

The landlord continues to hold the tenants' security deposit in the amount of \$1,600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$8,187.44 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent	\$9,300.00
Unpaid Utilities as of November 10, 2021	387.44
Recovery of Filing Fee for this Application	100.00
Security Deposit	-1,600.00
Total Monetary Order	\$8,187.44

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 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: April 11, 2022

Residential Tenancy Branch