



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL-S, MNDCL-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 Landlords applied for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 3, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, noting that the Landlord holds the security deposit;
- compensation for monetary loss or other money owed, noting that the Landlord holds the security deposit; and
- the filing fee.

The hearing started promptly at 11:00 a.m., and only the Landlords were present. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Landlord NB testified that the Notice of Dispute Resolution Proceeding and evidence was served on each of the Tenants on December 24, 2021 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 Landlords' documents served on the Tenants on December 24, 2021, in accordance with section 89 of the Act, and deem the documents received by the Tenants on December 29, 2021, in accordance with section 90 of the Act.

Preliminary Matter

The Landlords have made two monetary claims:

- 1) for unpaid rent, specifying that the Tenants owe \$600.00 in rent for November 2021, and \$365.75 in utilities, totalling \$965.75; and
- 2) for compensation for monetary loss or other money owed, specifying that the Tenants owe \$600 in rent for the month of December, and an unspecified additional amount for utilities.

As the Landlords' application for a monetary order for unpaid rent encompasses both of these claims, I dismiss the Landlords' application for compensation for monetary loss or other money owed.

Issues to be Decided

- 1) Are the Landlords entitled to an order of possession?
- 2) Are the Landlords entitled to a monetary order for unpaid rent and/or utilities?
- 3) Are the Landlords entitled to the filing fee?

Background and Evidence

The Landlord provided the following particulars regarding the tenancy. It began May 1, 2020; rent is \$1,200.00 a month, due on the first of the month; and the Tenants paid a security deposit of \$400.00, which the Landlords still hold. The Landlord testified that the Tenants still occupy the rental unit.

The Landlord testified that when the Tenants moved in, the parties made a verbal agreement that the Tenants would pay 35 percent of the utility charges for the month. The Landlord testified that they would provide the Tenants with a copy of the utility bill when they collected the rent, and the Tenants would pay the utility charges in the following few days, or with their next month's rent.

The Landlord testified there is no written tenancy agreement.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified that the 10 Day Notice was served on the Tenants in person on November 3, 2021, and provided a proof of service form, signed by a witness.

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 \$1,200.00, due November 1, 2021, and utilities in the amount of \$731.50, following a written demand on October 1, 2021.

The Landlords submitted as evidence a “30 Day Written Demand to Pay Utilities” letter dated October 1, 2021, addressed to the Tenants and indicating that they must pay the outstanding amount of \$731.50 by November 1, 2021.

In their application, the Landlords submitted that since being served with the 10 Day Notice, the Tenants paid \$600.00 of the rent owing for November 2021, and \$365.75 of the outstanding utilities.

The Landlords submitted as evidence a Monetary Order Worksheet indicating that the Tenants owe:

- \$600.00 for November rent;
- \$600.00 for December rent; and
- \$365.75 for outstanding utilities.

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

Month	Monthly Rent	Rent Paid	Monthly Balance Owing
November 2021	\$1,200.00	\$600.00	\$600.00
December 2021	\$1,200.00	\$600.00	\$600.00
January 2022	\$1,200.00	\$600.00	\$600.00
February 2022	\$1,200.00	\$600.00	\$600.00
March 2022	\$1,200.00	\$600.00	\$600.00
Total rent owing			\$3,000.00

The Landlords submitted as evidence copies of their utility bills, as well as a document showing how the Tenants’ portion of the bills were calculated. The entry for the February 5, 2021 “BCHydro” bill indicates that the Tenants’ portion of the bill is 75 percent, not 35 percent as indicated in the other entries. When I asked the Landlord about it, she indicated it was an error.

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 in person on November 3, 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 November 3, 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 on the effective date of the 10 Day Notice, November 13, 2021, 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 March 29, 2022.

Based on the Landlord's affirmed testimony and undisputed evidence, I find the Tenants owe unpaid rent for November 2021 to March 2022 in the amount of \$3,000.00, which they must pay the Landlord, pursuant to section 55(4) of the Act.

I accept the Landlord's undisputed affirmed testimony that at the beginning of the tenancy the parties reached a verbal agreement that the Tenants would pay 35 percent

of the monthly utility charges. I find this agreement to be part of the tenancy agreement between the parties.

I believe the Landlord's testimony that the mistake on the utilities calculation was an error.

The utilities amount on the demand letter and 10 Day Notice should have been \$601.89, calculated as follows:

The calculation for 35 percent of the February 2021 hydro bill is $\$324.03 \times 0.35 = \113.41 (The Tenants did not owe 75 percent, as calculated by the Landlords: $\$324.03 \times 0.75 = \243.02).

The difference between 75 percent and 35 percent of the February 2021 hydro bill is: $\$243.02 - \$113.41 = \$129.61$

The Landlords accidentally overcharged the Tenants \$129.61 for the February 2021 hydro bill.

The incorrect amount on the demand letter and 10 Day Notice was \$731.50. That amount, less the amount of \$129.61 overcharged, leaves the corrected outstanding utility amount at the time the demand letter and 10 Day Notice were served:

$\$731.50 - \$129.61 = \$601.89$

The Landlord testified that since the 10 Day Notice was served, the Tenants paid \$365.75 toward the outstanding utility amount. Therefore, the updated outstanding utility amount owing is \$236.14. ($\$601.89 - \$365.75 = \236.14)

Subsection (6) of section 46 **Landlord's notice: non-payment of rent** states:

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As the Landlord has provided the Tenant a written demand for utilities in accordance with 46(6) of the Act, I find they are entitled to a monetary order for unpaid utilities in the amount of \$236.14.

In their application, the Landlords have also referred to additional utilities amounts owing from new bills. I decline to consider further utilities amounts owing, as the Landlords have not quantified or otherwise explained the additional amount owed, and have not demonstrated that the utility charges are unpaid more than 30 days after the Tenants were given a written demand for payment of them. The Landlords are at liberty to apply for any additional utility amounts owing beyond the August 9, 2021 BC Hydro bill and the September 2, 2021 Fortis bill.

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 the majority of their application, I order the Tenants to pay the \$100.00 filing fee the Landlords paid to apply for dispute resolution.

I find the Landlords are entitled to a total monetary award as follows:

Outstanding rent	\$3,000.00
Outstanding utilities	\$236.14
Filing fee	\$100.00
Total	\$3,336.14

In accordance with section 72 of the Act, I allow the Landlord to retain \$400.00 of the Tenants' security deposit in partial satisfaction.

I find the Landlords are entitled to a monetary order for \$2,936.14.

In closing, I bring the parties' attention to section 13(1) of the Act, which states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Conclusion

The Landlords are 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 Landlords are granted a monetary order in the amount of \$2,936.14. 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 08, 2022

Residential Tenancy Branch