



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, MNRL, MNDL, MNDCL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order of possession for unpaid rent pursuant to sections 46 and 55;
- A monetary order for unpaid rent pursuant to sections 26 and 67;
- A monetary order for damages caused by the tenant or the tenant’s guests pursuant to sections 7 and 67;
- A monetary order for damages or compensation pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 11:00 a.m. and ended at 11:40 a.m. 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 attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant AB the Notice of Dispute Resolution Hearing package by registered mail to the tenant’s residential address on February 16, 2022. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that the package was returned to her as refused. I deem the Notice of Dispute Resolution Hearing package served upon the tenant, AB on February 21, 2022, five days after it was sent to the tenant by registered mail in accordance with sections 89 and 90 of the Act.

The landlord testified that the tenant MM had moved out of the rental unit in June of 2021. The tenant MM now resides in Saskatchewan. The landlord testified that she emailed the tenant MM with the Notice of Dispute Resolution Hearing package but did not advise me the date it was sent by email or provide as evidence a copy of the email sent or confirmation that the email was received. The landlord did not provide any evidence that the tenant MM had ever provided an email address as an address for

service as required under section 43 of the Regulations. Consequently, I was not satisfied the tenant MM was served in accordance with 89 of the Act and I dismissed the landlord's application seeking monetary orders against the tenant MM with leave to reapply at the commencement of the hearing.

Preliminary Issue

The landlord testified that the tenant AB continues to occupy the rental unit. The landlord testified that she has not been inside the rental unit to inspect it and does not know the extent of damage the tenant may have caused to it. The estimate for damages provided for this hearing was limited to the damage to the exterior of the home. As such, I found the landlord's application seeking damages to be premature and I dismissed those portions of the landlord's applications with leave to reapply at the beginning of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

This hearing proceeded in the absence of the tenant AB in accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

A copy of the tenancy agreement was provided as evidence. This tenancy began on July 1, 2009 with rent set at \$1,200.00 per month payable on the first day of each month. A security deposit of \$600.00 was collected from the tenants which the landlord continues to hold. The landlord does not remember if a condition inspection report was done at the commencement of the tenancy.

In 2015, the landlord raised the tenants' rent from \$1,200.00 to \$1,300.00 per month. The tenant MM told the landlord that she was suffering from cancer and needed assistance from her brother to pay her rent. The landlord agreed and the tenants began to pay \$500.00 per month rent. For 2016, 2017, 2018, 2019 and 2020, the tenants paid \$500.00 per month rent, not the \$1,200.00 as stated on the tenancy agreement or the \$1,300.00 proposed on the rent increase form.

The landlord testified that the tenant MM moved from the rental unit to Saskatchewan in June of 2021. The tenants did not pay any rent throughout 2021 except for a single payment of \$1000.00 made in November 2021. The landlord does not have record of what day that payment was made. In January 2022, the tenant AB paid \$800.00 and a

further \$900.00 in February. The landlord does not have records of the specific dates of rent payments.

On January 26, 2022, the landlord served the tenant AB with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting a copy of it to the tenant's door. The landlord provided pages 1 and 3 of the notice to end tenancy but testified that all 3 pages were served to the tenant. The landlord testified that the notice to end tenancy states the tenant failed to pay \$15,600.00 in rent that was due on February 1, 2022.

Subsequent to serving the tenant with the notice to end tenancy, the tenant paid \$1,300.00 for February's rent and \$1,300.00 for March's rent. The landlord was unable to advise the specific dates. Payments of rent were made by electronic transfer of funds and the landlord testified that she did not provide receipts because the electronic transfer notifications show the money was received. The tenant did not pay rent for the months of April or May, 2022.

Analysis

Based on the undisputed evidence of the landlord, I am satisfied that on January 29, 2022, the tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities three days after January 26th, the day it was posted to their door in accordance with sections 88 and 90 of the Act.

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.

The landlord's notice to end tenancy omitted an effective date (move out) date however I am satisfied the tenants knew or should have know the omitted information and I amend the landlord's notice to provide an effective date of February 3rd, 5 days after January 29th (the day the notice to end tenancy is deemed served upon the tenants.)

Based on the landlord's testimony and the Notice before me, I find that the tenants were served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenants are conclusively presumed to have accepted the tenancy ended on February 3, 2022. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 46(5) of the *Act*.

- Landlord's claim for unpaid rent

The landlord testified that the tenants' rent was increased from \$1,200.00 to \$1,300.00, effective March 1, 2016. The tenants never paid that \$1,300.00 rent, instead paying \$500.00 per month by agreement of the landlord, for the following 7 years.

First, turning to the rent increase in 2016: the maximum allowable increase for 2016 was 2.9%. As rent was \$1,200.00, the maximum allowable increase for 2016 would have been \$34.80. I find that rent from March 1, 2016, onward is set at \$1,234.80 per month.

The landlord's application for a monetary order against the tenant AB was dismissed with leave to reapply at the commencement of the hearing, due to the landlord's inability to satisfy me AB was served with the Notice of Dispute Resolution Proceedings package.

The landlord seeks compensation from the tenant AB for unpaid rent for all of 2021, except for \$1,000.00 that was paid in November 2021. The landlord also seeks rent for the months of January and February 2022, except for \$800.00 received in January and \$900.00 in February.

Item	Amount
Jan 1, 2021 to Dec 31, 2022 rent (\$1,234.80 x 12)	\$14,817.60
Less payment made in November, 2021	(\$1,000.00)
Jan 1, 2022 to Feb 28, 2022 rent (\$1,234.80 x 2)	\$2,469.60
Less payment made in January, 2022	(\$800.00)
Less payment made in February, 2022	(\$900.00)
Total	\$14,587.20

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security and pet damage deposits totaling \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the

landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.

Item	Amount
Compensation for outstanding rent	\$14,587.20
Filing fee	\$100.00
Less security deposit	(\$600.00)
Total	\$14,087.20

Conclusion

I grant an Order of Possession to the landlord effective **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 in the Supreme Court of British Columbia.

I issue a monetary order against the tenant AB in the amount of **\$14,087.20**.

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: May 16, 2022

Residential Tenancy Branch