



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, MNR-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent (with payment plan) that was not paid in the required time, and further to having served a 10 Day Notice dated January 7, 2022 ("10 Day Notice"); with a request for a monetary order of \$674.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of their Application filing fee.

Two agents for the Landlord, M.Y. and G.L. ("Agents"), and an advocate for the Tenant, D.S. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Advocate and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In terms of service of the Landlord's Notice of Hearing documents and evidence, the Agent testified that the Landlord served the Tenant with these documents via registered mail sent on February 17, 2022. The Agents submitted a copy of the Canada Post registered mail tracking numbers as proof of service. I checked the Canada Post website for the status of these mailings, and the Canada Post record indicates that registered mail notices were left at the rental unit, but that the package was not picked up by the Tenant.

The Advocate said that the Tenant was unaware that the hearing was taking place, until she received a "reminder" email from the RTB about it. The Advocate said that the Landlord's Notice of Hearing documents should have been posted somewhere obvious with a picture taken to prove it. I advised him that this was one means of service, but that a party may also serve the other party via registered mail. Further, according to

RTB Policy Guideline #12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find that the Landlord served the Notice of Hearing to the Tenant on February 22, 2022, five days after it was sent to her by registered mail. As such, I continued to hear from the Agents and consider the Landlord's documentary evidence. The Tenant had not submitted any documentary evidence for consideration in this matter.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on July 15, 2017, and ran to August 1, 2018; subsequently, further fixed term tenancies were signed by the Parties. They agreed that the Tenant is required by the tenancy agreement to pay the Landlord a (current) monthly rent of \$1,776.25, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$875.00, and no pet damage deposit. The Agents confirmed that the Landlord still holds the security deposit in full for this Application.

The Landlord submitted a copy of the 10 Day Notice, and the Agents confirmed in the hearing that it was signed and dated January 7, 2022, and that it has the rental unit address. The Agents confirmed that the 10 Day Notice was served via registered mail

on January 7, 2022, with an effective vacancy date of January 23, 2022, which is automatically corrected to January 22, 2022, by section 53 of the Act. The 10 Day Notice was served on the ground that the Tenant failed to pay \$674.00 in rent when it was due to the Landlord on January 1, 2022. The Landlord submitted a Canada Post registered mail receipt with a tracking number as proof of service of the 10 Day Notice.

The Landlord submitted a copy of a Repayment Plan that was used to allow the Tenant to pay off rent arrears of \$4,612.50 at ten percent a month or \$461.25 a month over ten months, in addition to the Tenant's ordinary rent payment.

Further, the Agents said that the Tenant has been behind in paying her portion of the residential property's utilities payments. They noted that the Tenant's obligation to pay utilities is set out in the addendum to the tenancy agreement as two-thirds of the total for the residential property. During the hearing, the Advocate testified that this amount does not consider the actual utilities that were used by each suite in the residential property. He said that the Tenant could be using less than two-thirds of the electricity and gas usage, therefore, this requirement is not equitable.

I agree that it would be better for the occupants of the residential property if each suite had meters for the gas and electricity; however, that is not what the Tenant agreed to at the start of the tenancy. The Agents directed me to clause 9 of the addendum to the tenancy agreement, which states:

9. Utility

The Tenant is responsible for paying TWO THIRDS utility (hydro & gas) bills during their tenancy. Any adjustments required will be made at the end of the lease agreement.

[emphasis in original]

I note that the Tenant's signature and initials are on the bottom of this page of the addendum.

The Agents directed me to the Tenant Ledger they uploaded, which contains the Tenant's credits and debits for the tenancy from December 22, 2021, through to May 1, 2022 ("Ledger") However, the first entry for December 22, 2021, is "Installment Payment Due (Nov & Dec 2021)". I infer from the evidence in the hearing, that the "Installment Payment" refers to the repayment plan noted above, which should be \$461.25 per month. Two months of this debt equals \$922.50; however, the Landlord is claiming \$1,331.60 for this line in the Ledger. There is no other entry identified as "Installment

Payment” nor “Repayment Plan” on the Ledger; however, in the hearing, the Agents asserted this as being part of the monetary claim, reflecting the amounts paid by the Tenant.

In the hearing, I asked the Agents if the Tenant’s arrears for rent, utilities, and repayment plan amounts for a total outstanding of \$1,908.17. The Agent said that the Ledger shows that the Tenant owed the Landlord \$3,684.17 as of May 1, 2022, but that the Tenant had made a payment of \$1,776.00 toward the outstanding arrears. The Agent said the Tenant still currently owes the Landlord \$1,908.17, as a result.

As the Tenant did not attend the hearing or submit any evidence to the contrary, I find the Landlord’s submissions on their monetary claim are undisputed, other than the Advocates assertions in the hearing. However, the Advocate did not comment on the amounts claimed by the Landlord, other than to offer to send the Tenant’s banking records for her version of what is owing. I advised the Advocate that the Act and Rules require respondents such as the Tenant to submit all evidence to the RTB and the applicant within at least 7 days of the hearing. As such, I am not authorized by the Act or Rules to accept further evidence after the hearing.

I entered the Ledger entries into an electronic spreadsheet and the amounts calculated therein were 50 cents lower than those set out in the Ledger. As such, I did extra reviews of the amounts entered and the formulas in the spreadsheet, and I confirm the amounts I calculated from the entries in the Ledger provided by the Landlord.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on January 12, 2022, five days after it was served to her by registered mail. I find that the 10 Day Notice is consistent with section 52 as to form and content.

Section 46 (5) of the Act states that if a tenant who has received a 10 Day Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the 10 Day Notice, I find that she is conclusively presumed under section 46 (5) of the Act to have accepted the 10 Day Notice, and I find that the tenancy, therefore, ended on January 22, 2022. As a

result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to, and I award the Landlord with an **Order of Possession** pursuant to section 55 (2) (b) of the Act. As the effective date has passed, I grant the Landlord an **Order of Possession** of the rental unit which will be **effective two days after service** on the Tenant.

I entered the Ledger entries into an electronic spreadsheet and the amounts calculated therein were 50 cents lower than those set out in the Ledger. As I reviewed the spreadsheet entries carefully, I find that the Landlord's calculations are 50 cents higher than they should be; therefore, I award the Landlord with recovery of **\$1,907.92** from the Tenant for rent, utilities, and repayment plan amounts owing, pursuant to section 62 of the Act.

I also find that the Landlord is entitled to recovery of the **\$100.00** filing fee pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$875.00 in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's \$875.00 security deposit in partial satisfaction of the monetary awards. I grant the Landlord a **Monetary Order of \$1,132.92** from the Tenant, pursuant to section 62 of the Act.

Conclusion

The Landlord is successful in their Application, as they provided sufficient evidence that the Tenant failed to dispute the 10 Day Notice, and has accumulated arrears in rent, utilities, and repayment plan amounts.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is awarded \$1,907.92 from the Tenant for rent, utilities, and repayment plan arrears; the Landlord is also awarded recovery of their \$100.00 Application filing fee from the Tenant for a total award of \$2,007.92. The Landlord is authorized to retain

the Tenant's \$875.00 security deposit in partial satisfaction of this award.

I grant the Landlord a **Monetary Order of \$1,132.92** for the remaining award amount owed by the Tenant to the Landlord. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant 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 final and binding on the Parties, unless otherwise provided under the Act, and 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 24, 2022

Residential Tenancy Branch