



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNR-DR, OPR-DR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

This application was originally heard by way of a Direct Request Proceeding and on June 10, 2022, an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant J.G. had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for the months of May through July 2022. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

The landlord also confirmed the rental unit number is "1A" and not "main" as identified in the application. The rental unit address has also been amended in this decision.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

Background and Evidence

The tenancy began on January 15, 2020. The current monthly rent is \$1600.00. As per the tenancy agreement the rent is payable on the 1st day of each month; however, in the hearing the parties confirmed it was normally paid on the 15th. The tenants paid a security deposit of \$800.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated April 19, 2022. The 10 Day Notice indicates an outstanding rent amount of \$3900.00 which was due on April 15, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on April 19, 2022, he personally served the tenant R.G. with the 10 Day Notice. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified the outstanding rent was not paid within 5 days and the tenant R.G. only paid an amount of \$800.00 in May 2022.

The landlord's amended monetary claim is for outstanding rent in the amount of \$7900.00. The landlord testified that this includes unpaid rent as per below:

Item	Amount
December 2021	700.00
January 2022	800.00
February 2022	800.00
March 2022	800.00
April 2022	800.00
May 2022	800.00

June 2022	1600.00
July 2022	1600.00
Total Unpaid rent:	\$7900.00

The tenant acknowledged service of the 10 Day Notice and that no payment was made for the rent arrears indicated, within five days of receiving the Notice.

The tenant agreed to the amount of outstanding rent as claimed by the landlord.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I am satisfied that the tenants were served with the 10 Day Notice and that the tenants failed to pay the outstanding amount as per the 10 Day Notice.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that 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 accept the landlord's claim for outstanding rent of \$7900.00.

The landlord continues to hold a security deposit of \$800.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$7100.00.

Conclusion

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

I grant the landlord a Monetary Order in the amount of \$7100.00. 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 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: July 15, 2022

Residential Tenancy Branch