



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, MNRL-S**

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; and
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and ended at 9:51 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 represented by an agent, OL (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Hearing package via registered mail to the tenant’s residential address on May 16, 2022, and the tracking number is recorded on the cover page of this decision. The landlord uploaded a copy of the delivery confirmation from Canada Post, indicating the tenant signed for the package on May 24, 2022. I find the tenant duly served with the Notice of Dispute Resolution Hearing package on May 24, 2022, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary order for unpaid rent?
Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is the basement unit in a house. The fixed term tenancy began on December 31, 2020, with rent set at

\$1,300.00 per month, payable on the first day of each month. The landlord testified that the landlord did not “renew the lease” at the end of the fixed term, however I advised the landlord that tenancy becomes month to month at the end of the fixed term if a new tenancy agreement is not entered into.

At the commencement of the tenancy, the landlord collected a security deposit of \$650.00 which she continues to hold.

The tenant paid rent up to January 31, 2022, but did not pay February’s rent on the 1st of the month. The tenant did not pay rent for the month of March and on March 8, 2022, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting a copy to the tenant’s door. The landlord uploaded a copy of the notice to end tenancy and a proof of service document. The notice states the tenant failed to pay \$2,600.00 in unpaid rent, which the landlord testified represents rent for February and March 2022. The landlord testified that subsequent to serving the notice to end tenancy upon the tenant, the tenant has not paid the arrears of \$2,600.00 or filed an application to dispute it. The tenant remains occupying the rental unit and has not paid rent for April, May, June, or July. The landlord seeks payment for those months of rent as well.

Analysis

Based on the undisputed testimony of the landlord and the evidence before me, I find the tenant is deemed served with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on March 11, 2022, three days after the day it was posted to his door in accordance with sections 88 and 90 of the Act.

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, 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 to which the notice relates by that date.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice, in this case by March 16, 2022. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant’s failure to take

either of these actions within five days has led to the end of the tenancy on March 21, 2022, the earliest date the notice can comply with section 46.

Section 46(2) of the *Act* requires that a Notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Pursuant to section 68, I find it would be reasonable to amend the notice to end tenancy to change the due date for the \$2,600.00 from February 1, 2022 to March 1, 2022 as the tenant knew or ought to have known this date was incorrect. I find the notice to end tenancy meets all other form and content provisions as set out in section 52 of the *Act*.

As the tenant continues to reside in the rental unit beyond the effective date, I find that the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenant.

Analysis - Monetary Order

I am satisfied, based on the undisputed testimony and evidence of the landlord that the tenant is currently in arrears of \$2,600 for the months of February and March, as stated in the notice to end tenancy. The landlord is entitled to recover rent for those months.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises. As the tenant continues to occupy the rental unit after the tenancy ended, the tenant is an overholding tenant as defined by section 57 of the *Act*. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. I award the landlord an additional \$3,900.00 for April, May and June's unpaid rent, plus pro-rated rent for the 4 days in July, up until the date of this hearing [$\$1,300.00 / 31 \text{ (days)} \times 4 = \167.74].

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application. Pursuant to the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit in partial satisfaction of the monetary award granted.

Item	Amount
February and March rent	\$2,600.00
April, May, June overholding tenant compensation	\$3,900.00
July overholding tenant compensation	\$167.74
Filing fee	\$100.00
Less security deposit	(\$650.00)
Total	\$6,117.74

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 award the landlord a monetary order in the amount of **\$6117.74**

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 04, 2022

Residential Tenancy Branch