



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice dated March 16, 2022 ("10 Day Notice"); with a request for a monetary order of \$5,400.00 for outstanding unpaid rent from the Tenants; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, J.B. ("Agent"), appeared at the teleconference hearing on behalf of the Landlords, and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide the Landlords' evidence orally and to respond to my questions. 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.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served each Tenant with the Notice of Hearing documents and the Landlords' evidence by Canada Post registered mail, sent on April 22, 2022. The Agent provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the in the absence of the Tenants.

Preliminary and Procedural Matters

The Agent provided his email address in the Application, and he confirmed it in the hearing. He also confirmed his understanding that the Decision would be emailed to the Agent, and mailed to the Tenants, and any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlords' documentary evidence to which the Agent pointed or directed me in the hearing. I also advised the Agent that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed the details of the fixed-term tenancy. He said the tenancy began on September 15, 2021, is scheduled to run to September 15, 2022, and is then supposed to operate on a month-to-month basis. The Agent confirmed that the Tenants are required to pay the Landlords a monthly rent of \$2,700.00, due on the 15th day of each month. He confirmed that the Tenants paid the Landlords a security deposit of \$1,350.00, and a \$675.00 pet damage deposit. The Agent confirmed that the Landlords still hold the deposits in full.

The 10 Day Notice was signed and dated March 16, 2022, it has the rental unit address, it was served via registered mail on March 16, 2022, with an effective vacancy date of March 31, 2022. The 10 Day Notice was served on the grounds that the Tenants failed to pay the Landlord \$5,400.00 rent when it was due on March 15, 2022.

The Agent said that the Tenants have not paid any rent since February 2022, and they now owe \$21,600.00.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Dec 15/21	\$2,700.00	\$0.00	\$2,700.00
Jan 15/22	\$5,400.00	\$2,700.00	\$2,700.00
Feb 15/22	\$5,400.00	\$2,700.00	\$2,700.00
March 15/22	\$5,400.00	\$0.00	\$5,400.00
April 15/22	\$8,100.00	\$0.00	\$8,100.00
May 15/22	\$10,800.00	\$0.00	\$10,800.00
June 15/22	\$13,500.00	\$0.00	\$13,500.00
July 15/22	\$16,200.00	\$0.00	\$16,200.00
Aug 15/22	\$18,900.00	\$0.00	\$18,900.00
Sep 15/22	\$21,600.00	\$0.00	\$21,600.00
	TOTAL		\$21,600.00

The Agent said that in addition to not paying rent, the Tenants have created a situation at the residential property that has become dangerous. He said a previous tenant moved out because of threats from the Tenants.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenants were properly served with the 10 Day Notice on March 21, 2022, five days after it was sent to each of them respectively by registered mail.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. There is no evidence before me indicating that the Tenants have a right to deduct anything from the rent owed to the Landlord. In the hearing, the Agent said that the Landlords are now owed **\$21,600.00** in unpaid rent as of September 15, 2022.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$5,400.00 is incorrect, as it was based on outstanding rent amount as of March 2022. Further, the Agent said that the amount owing is now up to \$21,600.00, as the Tenants have not paid any rent since February 2022, which was not full rent, either. The Agent requested that the Landlords' Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenants to pay their monthly rent owing. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlords would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlords' original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenants from \$5,400.00 to \$21,600.00.

The 10 Day Notice was signed, dated March 16, 2022, it had the rental unit address, and an effective vacancy date of March 31, 2022. As noted above, the 10 Day Notice was deemed served to the Tenants on March 21, 2022, five days after being sent by registered mail. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenants did not attend the hearing to testify as to why the rent was not paid, and they did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the \$21,600.00 in rent owed for March through September 2022.

As a result, I find that the Landlords are entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenants have not paid rent for seven months in 2022, the **Order of Possession** will be **effective two days after service** of the Order on the Tenants.

Based on the evidence before me, I find that the Landlords are successful in their Application, as I find that the Tenants breached sections 26 of the Act by not paying the rent owing to the Landlords since March 2022. Accordingly, I **award the Landlords \$21,600.00** in unpaid rent from the Tenants, pursuant to section 67 of the Act. I also award the Landlords recovery of their **\$100.00** Application 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 Tenants' security and pet damage deposits in partial satisfaction of the Landlords' monetary awards. The Landlords are authorized to retain the Tenants' **\$1,350.00** security and **\$675.00** pet damage deposits in partial satisfaction of the monetary awards. I grant the Landlords a Monetary Order of **\$19,675.00** against the Tenants for recovery of the remaining amount of the monetary awards owing.

Conclusion

The Landlords are successful in their Application, as the Tenants have not paid rent for more than the last seven months. Pursuant to section 55 of the Act, I grant the Landlords an **Order of Possession effective two days after service** of this Order on the Tenants. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible.

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

The Landlords' Application for recovery of unpaid rent is successful in the amount of **\$21,600.00**. Further, the Landlords are awarded recovery of their **\$100.00** filing fee for this Application from the Tenant for total awards of **\$21,700.00**.

The Landlords are authorized to retain the Tenants' **\$1,350.00** security deposit, and their **\$675.00** pet damage deposits in partial satisfaction of the Landlords' monetary awards.

I grant the Landlords a **Monetary Order** under section 67 of the Act from the Tenants of **\$19,675.00** for the remainder of the monetary awards owing by the Tenants to the Landlords.

This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) 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: September 15, 2022

Residential Tenancy Branch