



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNS MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on October 28, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord's agent (the Landlord) attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing. The Landlord testified that he sent the Notice of Dispute Resolution Proceeding to the Tenant by registered mail on June 28, 2022. Mail tracking was provided into evidence. The Landlord also stated that he sent his evidence package to the Tenant via registered mail on September 15, 2022. Proof of mailing was provided. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received the above noted packages 5 days after they were mailed, respectively.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the Landlord entitled to recover the filing fee from the Tenant for the cost of this application?

Background and Evidence

The Landlord testified that monthly rent is set at \$2,000.00 and is due on the first of the month. The Landlord holds a security deposit of \$1,000.00.

The Landlord testified that the Tenant started having challenges paying rent starting in March 2022, and no payments have been made since April 2022. The Landlord provided a spreadsheet showing what is owed, and what has been paid since March 2022, as follows:

Rent Due Date	Rent Amount Owning	Amount of Partial Payment(s)	Date of Payment	Balance
March 01, 2022	\$ 2,000.00	\$ 1,000.00	March 1, 2022	\$ 1,000.00
April 01, 2022	\$ 2,000.00	\$ 800.00	April 4, 2022	\$ 1,200.00
May 01, 2022	\$ 2,000.00	0	0	\$ 2,000.00
June 01, 2022	\$ 2,000.00	0	0	\$ 2,000.00
July 01, 2022	\$ 2,000.00	0	0	\$ 2,000.00
August 01, 2022	\$ 2,000.00	0	0	\$ 2,000.00
September 01, 2022	\$ 2,000.00	0	0	\$ 2,000.00
TOTAL	\$ 14,000.00	\$ 1,800.00	0	\$ 12,200.00

The Landlord stated that the Tenant also failed to pay October rent, in addition to the amounts above, and he now owes \$14,200.00 for rent. The Landlord stated that he is not seeking utility amounts.

The Landlord pointed to a 10 Day Notice (provided into evidence) that was issued in June, and stated that it was sent to the Tenant on June 9, 2022, via registered mail.

Proof of mailing was provided into evidence. This Notice indicated that the Tenant owed \$6,200.00 at that time. The Landlord stated that no payments have been made since that time.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent. When a Tenant does not pay rent when due, section 46(1) of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenant had a balance of unpaid rent at the time the 10 Day Notice was issued in June 2022. Pursuant to section 90 of the *Act*, I find the Tenant is deemed to have received the Notice 5 days after it was sent via registered mail, June 14, 2022.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the Tenant did either. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is sufficient evidence from the Landlord's to demonstrate that the Tenant owes and has failed to pay rent on numerous occasions dating back to March 2022. As summarized in the hearing, and documented in the worksheet the Landlord provided as part of his evidence package, I find the Tenant owes \$14,200.00 in unpaid rent up to and including the rent accrued as of the date of this hearing.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in

this hearing, I order the Tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent	\$14,200.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$1,000.00)
TOTAL:	\$13,300.00

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$13,300.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: October 31, 2022

Residential Tenancy Branch