



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on November 18, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based off a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice); and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The Landlord testified that served the Tenant with his Notice of Dispute Resolution Proceeding and evidence package, in person, on October 13, 2022. I find the Tenant was sufficiently served with this documentation the same day it was delivered in person.

The Landlord is seeking 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?

Background and Evidence

The Landlord explained that monthly rent is set at \$800.00 and is due on the first of the month. They do not hold a security deposit.

The Landlord explained the following with respect to payments and accruals:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
March 1, 2022	Rent Due	\$800.00		\$800.00
April 1, 2022	Rent Due	\$800.00		\$1,600.00
May 1, 2022	Rent Due	\$800.00		\$2,400.00
May 17, 2022	Rent Payment		\$935.00	\$1,465.00
May 25, 2022	Rent Payment		\$400.00	\$1,065.00
June 1, 2022	Rent Due	\$800.00		\$1,865.00
June 10, 2022	Rent Payment		\$200.00	\$1,665.00
June 22, 2022	Rent Payment		\$400.00	\$1,265.00
July 1, 2022	Rent Due	\$800.00		\$2,065.00
July 27, 2022	Rent Payment		\$400.00	\$1,665.00
August 1, 2022	Rent Due	\$800.00		\$2,465.00
August 24, 2022	Rent Payment		\$400.00	\$2,065.00
September 1, 2022	Rent Due	\$800.00		\$2,865.00
September 8, 2022	Rent Payment		\$50.00	\$2,815.00
September 21, 2022	Rent Payment		\$400.00	\$2,415.00
October 1, 2022	Rent Due	\$800.00		\$3,215.00
October 2022	Rent Payment		\$50.00	\$3,165.00
October 26, 2022	Rent Payment		\$400.00	\$2,765.00
November 1, 2022	Rent Due	\$800.00		\$3,565.00
November 2022	Rent Payment		\$50.00	\$3,515.00
Total Accrued Balance				\$3,515.00

The Landlord explained that they made mistakes in their initial worksheet and clarified the above noted amounts in the hearing. The Landlord explained that they issued the Notice to the Tenant in person, on August 31, 2022. The Landlord provided a signed proof of service from a third party. The amount noted on the Notice was \$2,865.00, that was due when the Notice was issued. However, after explaining the amounts in the hearing, it is clear that amount was supposed to be \$2,065.00 that was due at the time the Notice was issued, on August 31, 2022. The Landlord explained that no rent payments were received within the allowable 5 day window, although some partial payments were made later in the month of September 2022 as outlined above.

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 on August 31, 2022. On August 31, 2022, the 10 Day Notice was given to the tenant in person; I find the tenant received the 10 Day Notice on this day. I find the Notice complies with section 52 of the *Act* in terms of form and content.

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 testimony to demonstrate that the tenant owes

and has failed to pay rent on numerous occasions over the past several months, as laid out above. As summarized in the hearing, and as noted above in the table, I find the tenant owe \$3,515.00 in unpaid rent up to and including the month of November 2022.

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. In summary, I grant the monetary order in the amount of \$3,615.00.

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 **\$3,615.00**. 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: November 19, 2022

Residential Tenancy Branch