



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, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord PM ("landlord") attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

The landlord testified that the tenant was personally served with the landlords' application for dispute resolution hearing package on August 12, 2022. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlords' application and evidence on August 12, 2022.

Although I note that the tenant did submit evidence for this hearing, the landlord testified that they did not receive any evidentiary materials from the tenant. In review of the

documents, the tenant did not submit any proof of service to support that the landlord was served with these documents. As the landlord was not served with these documents in a manner required by section 88 of the *Act*, the tenant's evidentiary materials will be excluded for the purposes of this hearing.

The landlord testified that the tenant was served with the 10 Day Notice dated June 8, 2022 by way of posting the 10 Day Notice on the tenant's door. The landlords submitted a photograph of the 10 Day Notice taped to the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on June 11, 2022, 3 days after posting.

Although the landlords had applied for a monetary Order of \$2,500.00 in their initial claim, since they applied another \$3,000.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$2,500.00 to \$5,500.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to recover their filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on May 1, 2012, with monthly rent currently set at \$500.00, payable on the first of the month. The landlord submitted a Notice of Rent Increase dated September 1, 2018 for an increase in rent effective January 1, 2019. The landlord submitted rent cheques from the tenant, which included a cheque dated February 25, 2022 in the amount of \$250.00, indicating which noted "Half March Rent". I am satisfied that the evidence sufficiently

shows that rent was set at \$500.00 per month. The landlord confirmed that they still hold a security deposit of \$225.00 for this tenancy.

The landlord testified that the tenant was served with the 10 Day Notice on June 8, 2022 for failing to pay \$2,500.00 in outstanding rent as of June 1, 2022. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was served on the tenant, nor has the tenant moved out.

The landlord is seeking an Order of Possession as well as a Monetary Order for the unpaid rent.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenant pay the outstanding rent. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 21, 2022.

I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenant and anyone on the premises to vacate the premises by June 21, 2022. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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 find that the tenant has failed to pay \$5,500.00 in outstanding rent as of the hearing date. Accordingly, I allow the landlords' application to recover this unpaid rent.

As the landlords were successful with this application, I allow the landlords to recover the filing fee.

The landlords continue to hold the tenant's security deposit of \$225.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I find that the landlords' 10 day Notice is valid and effective as of June 21, 2022.

I grant an Order of Possession to the landlords effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlords' monetary claim as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim. The landlords are issued a monetary order in the amount of \$5,375.00.

Unpaid Rent as of December 2022	\$5,500.00
Filing Fee	100.00
Less Security Deposit Held	-225.00
Total Monetary Order	\$5,375.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: December 16, 2022

Residential Tenancy Branch