



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55; and
- a monetary order for unpaid rent and utilities, pursuant to section 26.

I left the teleconference connection open until 11:21 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. Landlord PS (the landlord) attended the hearing and 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail sent to the address at which the tenants reside on November 27, 2022, in accordance with section 89(2)(b) of the Act. The tracking numbers are recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail, the tenants are deemed to have received the materials on December 01, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$4,452.00 in unpaid rent and utilities to include an additional \$5,468.00 for the unpaid rent and utilities from January 01, 2022 to March 01, 2023.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent and utilities to \$9,920.00 for the unpaid rent and utilities from January 01, 2022 to March 01, 2023.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. a monetary order for unpaid rent and utilities?

Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the ongoing tenancy started on March 01, 2020. Monthly rent is \$2,100.00, plus utilities, due on the first day of the month. The landlord collected a security deposit in the amount of \$1,050.00 and a pet deposit in the amount of \$1,050.00 at the outset of the tenancy. The landlord currently holds in trust the security and pet damage deposits (the deposits) in the total amount of \$2,100.00. The tenancy agreement was submitted into evidence. It indicates that monthly rent is \$2,100.00 and it does not include water, electricity and heat.

The landlord stated the tenants agreed to pay a monthly flat fee of \$174.00 for electricity, \$43.00 for gas and \$46.00 for water. The monthly rent plus utilities is \$2,363.00.

The landlord served the Notice by leaving it in the tenants' mailbox on October 31, 2022.

The landlord submitted a copy of the October 31, 2022 Notice into evidence. It stated the tenants failed to pay the amount of \$5,452.00 since January 01, 2022. The Notice is signed by the landlord, gives the address of the rental unit, states the ground to end the tenancy and it is in the approved form. The effective date is November 12, 2022.

The landlord testified the tenants confirmed they were aware of the rental arrears breakdown when the landlord served the Notice.

The landlord submitted a ledger into evidence indicating the tenants had arrears in the amount of \$5,452.00 on October 31, 2022.

The ledger indicates the tenants paid \$18,375.00 from December 30, 2021 to October 03, 2022. The landlord said the tenants paid \$1,000.00 on November 04, \$500.00 on December 01, 2022, \$700.00 on January 17, \$2,200.00 on January 31, \$2,150.00 on March 02, 2022 and \$600.00 on March 20, 2023.

The landlord affirmed the tenant's current arrears for unpaid rent and utilities from January 01, 2022 to March 01, 2023 is \$9,920.00.

Analysis

I accept the landlord's convincing and uncontested testimony that the landlord left the Notice in the tenants' mailbox on October 31, 2022, in accordance with section 88(f) of the Act. Pursuant to section 90(d) of the Act, I deem the tenants received the Notice on November 03, 2022.

Based on the landlord's convincing and uncontested testimony and the tenancy agreement, I find that the landlord and the tenants agreed to a tenancy and the tenants are obligated to pay monthly rent and utilities in the amount of \$2,363.00 on the first day of each month.

Pursuant to section 46(1) of the Act, 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.

Based on the landlord's convincing testimony, the Notice and the ledger, I find the tenants have not paid the balance of rent and utilities between January 01, 2022 and March 01, 2023 and have rental and utilities arrears. I accept the uncontested and convincing testimony that the total amount due for rent and utilities between January 01, 2022 and March 01, 2023 is \$35,445.00 (15 monthly payments of \$2,363.00) and the tenants paid \$25,525.00. I find the tenants' current arrears is \$9,920.00 (the amount due minus the amount paid).

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Section 68(2) of the Act states:

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

As the tenants are currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 68(2)(a) of the Act.

As the tenants continue to occupy the rental unit, did not pay the full amount of rental arrears and did not dispute the Notice, I award the landlord an order of possession, per section 55(2)(b) of the Act.

Considering that rent has not been paid in full, the tenants did not make submissions about the effective date of the order of possession, and the effective date of the Notice is November 12, 2022, I order the order of possession to be effective two days after service.

Section 26(1) 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.

Per section 26(1) of the Act, and considering the tenancy agreement, the landlord's undisputed testimony, and the Notice, I award the landlord \$9,920.00 in unpaid rent and utilities between January 01, 2022 and March 01, 2023 .

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$2,100.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Balance of unpaid rent and utilities between January 01, 2022 and March 01, 2023	9,920.00
Deposits	2,100.00
Total:	7,820.00

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$2,100.00 deposits and award the landlord \$7,820.00. The landlord is 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, 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: March 30, 2023

Residential Tenancy Branch