



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S MNRL-S OPU CNR ERP RP**

Introduction

This hearing dealt with applications from both the landlords and tenant pursuant to the *Residential Tenancy Act* ("Act").

The landlords applied for:

- An Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55;
- A monetary order for damages to the rental unit and unpaid rent pursuant to section 67;
- An order allowing the landlord to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- An order cancelling the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") pursuant to section 46;
- An order for the landlords to complete emergency repairs pursuant to section 62; and
- An order for the landlords to complete regular repairs pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M.

Both of the landlords attended the hearing, with landlord J.J. ("landlord") presenting submissions. The landlord was given a full opportunity to be heard, to present sworn 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.

The landlord testified that he posted a 10 Day Notice to End Tenancy on the tenant's door on January 2, 2019. I find that in accordance with sections 89 and 90 of the *Act*, the 10 Day Notice to End Tenancy dated January 2, 2019 was deemed served on January 5, 2019, three days after posting to the door of the rental unit on January 2, 2019.

The landlord testified that he served the Notice of Hearing package to the tenant by posting it to the door of the tenant's rental unit on January 16, 2019. I find that the tenant has been deemed served with the Notice of Hearing package three days later, on January 19, 2019 in accordance with sections 89 and 90 of the *Act*.

The landlord testified that at 8:47 a.m., 43 minutes before the hearing, he received a lengthy text message from the tenant seeking a resolution of the matters before me. The entire text message was read out to me. The landlord received another text message at 9:18 a.m., 12 minutes before the hearing, from the tenant advising that the tenant is feeling ill. He will not be attending the hearing and will be going to the hospital. The landlord asked that we proceed with the hearing in the absence of the tenant which we did in accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure*.

Preliminary Matter

At the commencement of the hearing, the landlord asked for permission to increase the monetary claim to include an additional month of unpaid rent for February 2019 because the tenant is still occupying the rental unit. I have allowed the landlord's request pursuant to section 64(3)(c) of the *Act* and rule 4.2 of the *Rules of Procedure*.

Issue(s) to be Decided

Is the landlord entitled to:

- An Order of Possession for unpaid rent
- A monetary order for damages to the rental unit and unpaid rent
- An order allowing the landlord to retain the security deposit
- Authorization to recover the filing fee from the tenant

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of the landlords' position were recorded and will be addressed in this decision.

A copy of the tenancy agreement was entered into evidence by the landlord. This tenancy began as a month to month tenancy commencing on May 1, 2018 with rent set at \$1,300.00 to be paid on the first day of each month. The tenancy agreement notes that the tenant is to pay for the electrical utility, natural gas utility, water and sewer. The landlord testified that when he purchased the rental unit, the tenant was already in occupation of the premises. The previous landlord collected a security deposit from the tenant in the amount of \$575.00 and this amount was transferred to the current landlords.

The landlords are seeking an Order of Possession for the tenant's failure to pay rent and utilities and also seek compensation for the unpaid rent and utilities.

The landlord served the tenant with two 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notices"), both entered as evidence. The first Notice dated December 1, 2018 describes the tenant as owing \$500.00 for outstanding arrears in rent and utilities of \$516.57 following written demand on October 5, 2018. The tenant paid the outstanding rent of \$500.00 on December 3 but did not pay the utility bills.

The second Notice, dated January 2, 2019 describes an outstanding rent of \$1,300.00 and outstanding utilities in the amount of \$664.29 following written demand on December 12, 2018. The landlord testified that he served the second Notice by posting it to the door of the tenant's rental unit on January 2, 2019. This was witnessed by his daughter who was not called as a witness. The tenant filed to dispute this Notice two days later, on January 4, 2019.

The landlord provided a 2 utility bills from the municipality which indicates the following:

	August 21	November 23	Aug 21 + Nov 23 total
Previous Bill Amount	\$369.68	\$516.57	
Basic water	\$22.87	\$22.87	\$45.74
Basic sewer	\$32.74	\$32.74	\$65.48
Metered water	\$11.66	\$11.52	\$23.18
Metered sewer	\$18.05	\$18.73	\$36.78
Curbside Collection	\$57.71	\$57.21	\$114.42
Add interest charge	\$3.46	\$4.65	
Amount Now Due	\$516.57	\$664.29	\$285.60

The August 21, 2018 bill spanned from May 8, 2018 to August 7, 2018. The November 23, 2018 bill spanned August 8, 2018 to November 18, 2018.

The landlord did not provide a written demand for utilities to the tenant, however he provided a screenshot of an image purported to be a copy of the utility bill. The image is dated September 5.

The landlord also provided an image of a screenshot of a text dated November 29 which appears to depict the edge of the November 23, 2018 utility bill. Below the image, the text, 'Hey [tenant's name] this is way over due. I need you to take care of this by next'. [not stated] The landlord testified that he did not provide a written demand for payment of this utility bill but provided a copy to him through text messaging.

The landlord testified that the tenant had not paid rent in the amount of \$2,600.00 for the months of January or February 2019.

The landlord's claim for damages was supplemented by photographs of the rental unit. The landlord testified that there is pet damage, smoke smell and that the unit is dirty. No estimates or invoices were supplied to demonstrate how the amount of \$1,500.00 claimed for damages was arrived at.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30 A.M. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

The tenant was fully aware of the hearing, as evidenced by the text messages to the landlord advising of his choice to not attend. While the exact nature of the tenant's illness was not disclosed to the landlords or to me, it appears the tenant had the capacity to initiate a negotiation with the landlord and seek resolution. I find that the tenant was capable of attending the hearing but chose not to do so. Consequently, I dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- a. the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- b. the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application. I find that the landlord's 10 Day Notice dated January 2, 2019 complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Monetary Order - Unpaid rent

Section 26 of the *Act* states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to the claim for a monetary award.

I accept the landlord's undisputed testimony that the tenant failed to pay rent in the amount of \$2,600.00 for January 1, 2019 and February 1, 2019. The landlord is therefore entitled to a monetary order in the amount of **\$2,600.00** for unpaid rent pursuant to section 67 of the *Act*.

Unpaid utilities

There was no evidence that the tenant was responsible for paying utilities at any time prior to the commencement of the tenancy on May 1, 2018. The utility bill from the municipality depicts previous charges in the amount of \$369.68 that accrued before May 8, 2018. I find that the tenant is not responsible for paying this part of the utilities, but is responsible for paying utilities for the period May 8, 2018 onwards. The utilities used by the tenant between May 8, 2018 and November 23, 2018 amount to **\$285.60**. The landlord is entitled to a monetary order in that amount.

As the landlord's application was successful, the landlord is entitled pursuant to section 72 of the *Act* to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of **\$575.00**. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of **\$2,410.60** as follows.

Item	
January 2019 unpaid rent	\$1,300.00
February 2019 unpaid rent	\$1,300.00
Unpaid utilities	\$285.60
Filing fee	\$100.00
Less security deposit	(\$575.00)
Monetary Order	\$2,410.60

The tenant must be served with this Order as soon as possible. Should the tenant 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: February 19, 2019

Residential Tenancy Branch