



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR-PP, OPRM-DR, FFL**

Introduction

On October 1, 2020, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request because the landlord's proof of service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was not witnessed or signed by the tenant. It was also noted that the landlord failed to upload the third page of the 3 page document, 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

I have been delegated authority under the *Act* to consider the landlord's application 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 from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she personally served the tenant LM with two copies of the Notice of Reconvened Hearing and related documents on October 3, 2020. I am satisfied the tenant was duly served in accordance with the adjudicator's order which states: **The applicants must serve the Notice of Reconvened Hearing, the interim**

decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

Preliminary Issues

Since issuing the 10 Day Notice, arrears in rent for the months of October and November has accrued. The landlord sought to amend the application for a monetary order to include rent for these months and I allowed this amendment in accordance with section 63(3)(c) of the Act.

The landlord testified that the tenants vacated the rental unit on November 18, 2020 and that she no longer requires an Order of Possession. Pursuant to section 62(4), I dismiss this part of the landlord's application as it does not disclose a dispute that may be determined under Part 5 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The month to month tenancy began on January 1, 2020. Rent was set at \$1,600.00 per month, payable on the first day of each month. A security deposit of \$800.00 and a pet damage deposit in the amount of \$800.00 was collected. A condition inspection report was done at the commencement of the tenancy.

The tenants paid rent up until the end of March. On April 1, the tenants became sporadic in paying rent. For example, the tenants only paid \$200.00 of the \$1,600.00 April rent on April 3rd. The landlord was unable to serve the tenants with a notice to end tenancy during the state of emergency declared by the BC government, so the tenants remained living in the rental unit. During this time, the tenants paid the following amounts:

Date	Amount
April 3, 2020	\$200.00
May 19, 2020	\$300.00
August 7, 2020	\$280.00
September 9, 2020	\$400.00
Total	\$1,180.00

On September 2, 2020 at approximately 5:00 p.m., the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by giving each tenant a copy of the notice. Pages 1 and 2 of the 3-page Notice were supplied as evidence by the landlord. The landlord testified she did not realize the form had 3 pages and acknowledged she only served the first two upon the tenants. The notice has an effective date of September 12, 2020 and states the tenants have failed to pay rent in the amount of \$1,600.00 due on September 1, 2020. The landlord testified that when she served the notice to end tenancy, she also gave the tenants a rent repayment plan for the arrears in rent for the previous months, not including September. A copy of that document was also supplied as evidence.

The landlord testified that, with the exception of the \$1,180.00 paid sporadically to her, rent has remained unpaid from April 1, to November 18th, when they vacated the rental unit, a period of 7 months and 18 days.

Analysis

The tenants did not attend this hearing to dispute any of the landlord's evidence or testimony.

First, addressing the adjudicator's concerns regarding service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities: based on the undisputed, affirmed testimony of the landlord, I am satisfied the tenants were duly served with the Notice on September 2, 2020 when the landlord personally served the tenant LM in accordance with sections 88 and 90 of the Act.

Second, the landlord acknowledged she did not serve page 3 of the 2-page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I note that the 3rd page of the notice provides tenants with information regarding timelines to dispute the notice and what happens to the tenancy if they do not file to dispute the notice. As the tenancy has already ended, pursuant to section 62, I find the third page of the notice has no bearing on the landlord's application for a monetary order.

Based on the landlord's undisputed testimony, I find the tenants are in arrears of rent, as sought by the landlord. Section 26 of the *Act* is clear, 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 the tenants did not have any right to deduct any portion of the rent due to the landlord. The landlord is entitled to a monetary award for the unpaid rent for the 7 months from April 1, to October 31, 2020: (\$1,600.00 x 7 =

\$11,200.00) plus 18 days for the first 18 days in November ($\$1,600.00 / 30 \times 18 =$ **\$960.00**). The sporadic payments made between April 3 and September 9 will be deducted from the total amount awarded. ($\$11,200.00 + \$960.00 - \$1,180.00 =$ **\$10,980.00**).

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for this application.

The landlord continues to hold the tenant's security and pet damage deposits totaling \$1,600.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim.

Item	Amount
Arrears in rent	\$10,980.00
Filing fee	\$100.00
Less security deposit	(\$800.00)
Less pet damage deposit	(\$800.00)
Total	\$9,480.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$9,480.00**. 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: December 07, 2020

Residential Tenancy Branch