



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

On September 19, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 19, 2020, the Landlord amended her Application seeking to increase the amount of monetary compensation she was seeking pursuant to Section 67 of the *Act*.

The Landlord attended the hearing; however, neither Tenant attended at any point during the 40-minute hearing. All in attendance provided a solemn affirmation.

The Landlord advised that she served two, separate Notice of Hearing packages to the Tenants. She stated that she served Tenant M.K. by registered mail on October 29, 2020 and she served Tenant K.K. by hand on October 27, 2020 (the registered mail tracking number is listed on the first page of this Decision). Based on this solemnly affirmed, undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing packages.

She then advised that she served the Tenants with her Amendment and evidence by registered mail on November 20, 2020 (the registered mail tracking numbers are listed on the first page of this Decision). Based on this solemnly affirmed, undisputed testimony, I am satisfied that the Landlord’s evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on August 1, 2013, that rent was currently established at an amount of \$3,369.00 per month, and that it was due on the fifteenth day of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$500.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

She stated that the Notice was served to the Tenants by being posted to their door on August 27, 2020. The Notice indicated that \$3,369.00 was due on March 15, 2020. It also stated that the effective end date of the tenancy was September 7, 2020.

She submitted that she is seeking compensation in the amount of **\$18,439.18**, broken down as follows:

March 2020 rental loss	\$3,369.00
April 2020 rental loss	\$1,619.00
May 2020 rental loss	\$1,619.00
June 2020 rental loss	\$1,644.00
July 2020 rental loss	\$1,644.00
August 2020 rental loss	\$1,644.00
September 2020 rental loss	\$1,644.00
October 2020 rental loss	\$1,644.00
November 2020 rental loss	\$1,644.00

December 2020 rental loss	\$1,644.00
Water bill	\$277.70
Electricity bill	\$46.48

She submitted that the Tenants did not pay March 2020 rent at all and they have not paid any rent as of the date of this hearing. She then testified that she had a verbal agreement with the Tenants, since the start of the tenancy, that they be allowed to sublet a portion of the rental unit. She stated that as the Tenants did not pay her the rent, she started collecting rent directly from two different sub-tenants. In April and May 2020, she collected \$925.00 and \$825.00 each month from each sub-tenant respectively. Thus, the remaining balance of rent owed for these months from the Tenants is \$1,619.00 per month.

She then stated that as of June 2020, the two sub-tenants paid her \$925.00 and \$800.00 per month respectively. Thus, the remaining balance of rent owed for these months from the Tenants is \$1,644.00 per month. She submitted that one of the sub-tenants paid her a security deposit of \$400.00 on September 4, 2020.

She advised that she is also seeking compensation in the amount of **\$277.70** for the cost of utilities as the Tenants stopped paying this bill. As such, the Landlord had to pay this herself, and she submitted a copy of the invoice to support her claim.

Finally, she advised that she is also seeking compensation in the amount of **\$46.48** for the cost of electricity as the Tenants stopped paying this bill. As such, the Landlord had to pay this herself as well, and she submitted a copy of the invoice to support her claim.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is

received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on August 30, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants were deemed to have received the Notice on August 30, 2020, they must have paid the March 2020 rent in full by September 5, 2020 to cancel the Notice. Alternately, they could have disputed the Notice by Tuesday September 8, 2020 at the latest. The undisputed evidence is that the Tenants did not pay the full amount of rent or dispute the Notice. Furthermore, there is no evidence to establish that the Tenants had a valid reason, or any authority under the *Act*, for withholding the rent.

As the Tenants did not pay the March rent in full by September 5, 2020, and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenants.

With respect to the Monetary Order for compensation for rent, I am satisfied that rent was established at \$3,369.00 per month for the whole rental unit, and that the Tenants have not paid any rent as of March 2020. While the Landlord started collecting rent from the two different sub-tenants and may have inadvertently started individual, separate tenancies with them, I am satisfied that this rent was accepted as part of what the Tenants owed monthly to the Landlord. As such, I am satisfied that the Tenants are responsible for the remaining rental loss that the Landlord suffered from March 2020 to November 2020. As the next rent payment is due on December 15, 2020 pursuant to the tenancy agreement, and as this Decision has been rendered prior to when rent is due, I decline to award for December 2020 rental loss. The Landlord is at liberty to apply against the Tenants for any other losses in a separate Application.

With respect to the Landlord's claims for utilities and hydro, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Given the undisputed evidence before me, I am satisfied that the Tenants failed to pay these outstanding bills. Consequently, I grant the Landlord a monetary award in the amounts of **\$277.70** and **\$46.48** to satisfy these claims.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

March 2020 rental loss	\$3,369.00
April 2020 rental loss	\$1,619.00
May 2020 rental loss	\$1,619.00
June 2020 rental loss	\$1,644.00
July 2020 rental loss	\$1,644.00

August 2020 rental loss	\$1,644.00
September 2020 rental loss	\$1,644.00
October 2020 rental loss	\$1,644.00
November 2020 rental loss	\$1,644.00
Water bill	\$277.70
Electricity bill	\$46.48
Recovery of filing fee	\$100.00
Security deposit	-\$1,500.00
Pet damage deposit	-\$500.00
TOTAL MONETARY AWARD	\$14,895.18

Conclusion

Based on the above, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$14,895.18** 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: December 10, 2020

Residential Tenancy Branch