



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mist Property Corp
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing originated as a Direct Request Proceeding and in an Interim Decision dated January 18, 2021 a participatory hearing was ordered. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:22 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") 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 agent and I were the only ones who called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they are not recording this dispute resolution hearing.

The Interim Decision states:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.

The agent testified that the above documents were served to each tenant via registered mail on January 20, 2021. A Canada Post registered mail receipt stating same was entered into evidence. The Canada Post website states that the above packages were successfully “delivered to your community mailbox, parcel locker or apt./condo mailbox” on January 22, 2021. I find that the tenants were deemed served with the above documents on January 25, 2021, five days after they were mailed, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Amendments

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

The agent testified that the owner of the subject rental property was using a different property management company when this tenancy agreement was signed and that the owner signed an agreement with the property management company listed as the landlord on this application for dispute resolution, in October of 2020. The agent testified that he worked for the landlord property management company listed on the landlord's application for dispute resolution. The management agreement for same was entered into evidence. The agent testified that he switched management companies in January of 2021 and that the owner signed a new management agreement with this new property management company. This property management agreement was entered into evidence. The agent testified that the correctly named landlord in this application for dispute resolution should be the current property management company that is managing this tenancy.

I accept the above undisputed testimony of the agent. I find the correctly named landlord is the current management company. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application for dispute resolution to state the current property management company as the landlord.

The landlord's application for dispute resolution seeks \$3,400.97 in unpaid rent; however, it is clear from the landlord's application for dispute resolution and evidence that in addition to unpaid rent the landlord is also claiming unpaid utilities and late fees.

The agent testified that the amount of outstanding rent, utilities, late fees and other charges now stands at \$950.97.

I find that while the landlord did not file a claim for monetary damages for unpaid utilities or late fees, it was obvious from the application that the landlord was seeking to recover these damages. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to seek to recover a monetary award for damages arising from this tenancy.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application for dispute resolution to claim the current amount of outstanding rent, utilities and late fees. I find that this amendment does not prejudice the tenant as the landlord's claim is being reduced to reflect the current status of the landlord's claim.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on May 1, 2020 and is currently ongoing. Monthly rent in the amount of \$2,420.00 is payable on the first day of each month. A security deposit of \$1,210.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. Section 62 of the tenancy agreement addendum states that the tenants will pay the landlord \$70.00 per month for internet utilities. Section 21 of

the tenancy agreement addendum states that the landlord is entitled to charge the tenants a \$25.00 late rent fee for late rent.

The agent testified that the tenants did not pay rent for July, August or September of 2020 and that the tenants refused to communicate with the agent when rent was not paid. The agent testified that a Repayment Plan, RTB form 14, was served on a person who apparently lives with the tenants at the subject rental property on September 11, 2020. A witnessed proof of service document was entered into evidence. Page one of the proof of service document states that the document being served was a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30), A 30 Day Written Demand to Pay Utilities, and form RTB-14. The second page of the proof of service document states the document served on September 11, 2020 was a 30-Day Utility Demand. The agent testified the proof of service document entered into evidence was proof of service of RTB form 14, not a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30) or a 30 Day Written Demand to Pay Utilities.

The Repayment Plan was entered into evidence and states that the tenant is required to re-pay unpaid rent, utilities and late fees incurred in the summer of 2020. The Repayment Plan states that the tenant is required to pay monthly installments in the amount of \$566.53 from November 1, 2020 to July 1, 2021.

The agent testified that a 10 Day Notice for Unpaid Rent was posted on the tenants' door on December 2, 2020. A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice states that the tenants failed to pay rent in the amount of \$66.53 that was due on December 1, 2020.

The landlord testified that the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice and did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

The agent testified that the initial rent payments made prior to July 2020 were made by the tenants but the rent payments made from October 2020 going forward were made by another party who is not on the tenancy agreement and who now apparently resides in the subject rental property. The agent testified that the tenancy between the landlord and the tenants has not ended and the original tenants have not communicated the ending of the tenancy or their intent to vacate the property.

The agent entered into evidence a ledger from the previous property management company which states:

Date	Description	Charge	Payment	Balance
July 1, 2020	July rent	\$2,420.00	\$0.00	\$2,420.00
July 1, 2020	July utilities	\$70.00	\$0.00	\$2,490.00
July 5, 2020	July late fees	\$26.25	\$0.00	\$2,516.25
July 5, 2020	July late fees	-\$1.25	\$0.00	\$2,515.00
August 1, 2020	August rent	\$2,420.00	\$0.00	\$4,935.00
August 1, 2020	August utilities	\$70.00	\$0.00	\$5,005.00
August 5, 2020	August late fees	\$26.25	\$0.00	\$5,031.25
August 5, 2020	August late fees	-\$1.25	\$0.00	\$5,030.00
September 1, 2020	September utilities	\$70.00	\$0.00	\$5,100.00
September 1, 2020	September rent	\$2,420.00	\$0.00	\$7,520.00
September 5, 2020	September late fees	\$25	\$0.00	\$7,545.00
September 21, 2020	September payment	\$0.00	\$2,490.00	\$5,055.00
October 1, 2020	October utilities	\$70.00	\$0.00	\$5,125.00
October 1, 2020	October rent	\$2,420.00	\$0.00	\$7,545.00
October 5, 2020	October late fees	\$25.00	\$0.00	\$7,570.00
October 7, 2020	October payment	\$0.00	\$3,109.03	\$4,460.97
November 1, 2020	November rent	\$2,420.00	\$0.00	\$6,880.97
November 1, 2020	November utilities	\$70.00	\$0.00	\$6,950.97
November 3, 2020	November payment	\$0.00	\$2,990.00	\$3,960.97
November 3, 2020	November payment	\$0.00	\$60.00	\$3,900.97
December 1, 2020	December utilities	\$70.00	\$0.00	\$3,970.97
December 1, 2020	December rent	\$2,420.00	\$0.00	\$6,390.97
December 3, 2020	December payment	\$0.00	\$2,990.00	\$3,400.97

The agent testified that the ledger from the previous property management company does not have January 2021's charge and payment information. I allowed the agent 48 hours to upload proof of the tenants' payments for January 2021 and the new property management company's ledger from February 2021 to April 2021. The agent uploaded into evidence the owner's statement of charges and credits. The owner's statement states that the tenants paid \$3,200.00 on January 4, 2021. The agent testified that the charges for January were \$2,420.00 for rent and \$70.00 for utilities.

The agent entered into evidence a ledger from the current management company which states:

Date	Description	Charge	Payment	Balance
February 1, 2021	February rent	\$2,420.00	\$0.00	\$2,420.00
February 1, 2021	February utilities	\$70.00	\$0.00	\$2,490.00
February 1, 2021	Opening balance	\$2,690.97	\$0.00	\$5,180.97
February 2, 2021	February payment	\$0.00	\$3,050.00	\$2,130.97
March 1, 2021	March rent	\$2,420.00	\$0.00	\$4,550.97
March 1, 2021	March utilities	\$70.00	\$0.00	\$4,620.97
March 5, 2021	March payment	\$0.00	\$3,100.00	\$1,520.97
April 1, 2021	April rent	\$2,420.00	\$0.00	\$3,940.97
April 1, 2021	April utilities	\$70.00	\$0.00	\$4,010.97
April 5, 2021	Door repair	\$200.00	\$0.00	\$4,210.97
April 5, 2021	April payment	\$0.00	\$3,260.00	\$950.97

The agent testified that the tenant currently owes \$950.97 in unpaid rent, late fees, utilities and door repair fees.

No evidence regarding damage to the door was provided in the hearing or entered into evidence.

Analysis

Section 45 of the *Act* set out the ways a tenant may end a tenancy. Section 45 of the *Act* states:

- 45** (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a)is not earlier than one month after the date the landlord receives the notice, and
 - (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a)is not earlier than one month after the date the landlord receives the notice,
 - (b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Based on the agent's undisputed evidence I find that the tenants have not ended the tenancy in accordance with section 45 of the *Act* and that this tenancy is ongoing.

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting on the door of the subject rental property. I find that the tenants were deemed served with the 10 Day Notice on December 5, 2020, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is December 15, 2020. I find that the corrected effective date of the 10 Day Notice is December 15, 2020.

Section 46(5) of the *Act* states:

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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Based on the undisputed testimony of the agent and the ledgers entered into evidence, I find that the tenants failed to pay the rent stated as outstanding on the 10 Day Notice and failed to file an application to dispute the 10 Day Notice, within five days of receipt of the 10 Day Notice. Pursuant to section 46(5) of the *Act*, the tenants' failure to take either of these actions led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by December 15, 2020, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Residential Tenancy Branch Policy Guideline 52 states:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

“Affected rent” is rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

As this tenancy has ended pursuant to my above findings, the landlord is entitled to recover unpaid affected and non-effected rent.

Because the tenants made lump sum payments to the landlord it is not possible to determine what sums of money were paid towards rent, utilities, door damages or late charges specifically. I will therefore determine what amount of the above charges the landlord has proved the tenants owe. These sums will be offset against what has been paid.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the “*Regulation*”) states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenants’ cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the landlord is entitled to recover late rent fees of \$25.00 per month for July to October 2020 as the tenants were late paying rent for those months and the tenancy agreement addendum provides for a \$25.00 late fee.

Pursuant to section 62 of the tenancy agreement addendum I find that the tenant is required to pay \$70.00 per month for internet utilities.

The agent did not provide any evidence regarding the door repair charge of \$200.00. I find that the landlord has not proved, on a balance of probabilities, that the tenant damaged a door and that the repair cost was \$200.00. I therefore decline to award the landlord the cost of the door repair.

I accept the ledgers and owner's statement as an accurate representation of rents paid by the tenants. I find that the landlord has proved all charges for rent, utilities and late fees set out in the ledgers. I accept that January's rent was \$2,420.00 per month and that January's utilities were \$70.00 per month based on the tenancy agreement and addendum. Based on the owner's statement I find that the tenant paid \$3,200.00 to the landlord on January 4, 2021. Based on the ledgers and the owner's statement entered into evidence, I find that the tenants owe the landlord the amount stated as owing on the most recent ledger (\$950.97) for unpaid rent, late fees and utilities, less the \$200.00 door repair charge which has not been proved. The landlord is awarded a monetary award for unpaid rent, utilities and late fees in the amount of \$750.97.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$850.97 from the tenants' security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

The landlord is entitled to retain \$850.97 from the tenants' security deposit.

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: April 16, 2021

Residential Tenancy Branch