



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, OPU, MNRL-S, MNDCL-S, FFL

Introduction

On April 20, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent and Utilities based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession on a Tenant’s notice to end tenancy pursuant to Section 45 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on August 23, 2021.

Landlord J.F. attended the hearing with A.F. attending as her agent; however, the Tenant did not attend at any point during the 29-minute teleconference. At the outset of the hearing, I advised the parties that recording of the hearing was prohibited. They were reminded to refrain from doing so and they acknowledged this term. All parties in attendance provided a solemn affirmation.

J.F. advised that the Tenant’s name was incorrect on the Application. As such, the Style of Cause on the first page of this Decision was amended to reflect this change. As well, the dispute address was amended to reflect the actual rental unit that the Tenant occupies.

J.F. advised that she served the Notice of Hearing and evidence package to the Tenant by registered mail on May 1, 2021 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was refused and returned to sender. Based on this undisputed evidence, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlords’ 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

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords 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.

J.F. advised that the tenancy started sometime in July 2017, that rent was currently established at an amount of \$1,600.00 per month, and that it was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

She testified that the Notice was served to the Tenant by posting it to the Tenant's door and placed in her mailbox on April 3, 2021. She submitted a signed proof of service form to corroborate service. The Notice indicated that \$1,600.00 was owing for rent on April 1, 2021 and that \$50.66 was owing for utilities on April 1, 2021. The effective end date of the tenancy was noted as April 16, 2021.

J.F. submitted that the Tenant did not pay any rent for April 2021. Thus, the Notice was served. As well, the Tenant has not paid any rent since service of the Notice either. She stated that the Tenant did not have any authorization to withhold any amount of rent from April 2021 onwards. As such, the Landlords are seeking an Order of Possession and a Monetary Order in the amount as follows:

- April 2021 rent: \$1,600.00
- May 2021 rent: \$1,600.00
- June 2021 rent: \$1,600.00
- July 2021 rent: \$1,600.00
- August 2021 rent: \$1,600.00
- Total rental arrears: **\$8,000.00**

She advised that the Tenant would ordinarily pay rent by electronic transfer. She also stated that she served the Tenant with a written demand letter on April 1, 2021 for the utilities owed.

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 Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 46 of the *Act* also states that if the tenancy agreement requires the Tenant to pay for utilities, the Landlords must first give the Tenant a written demand for payment. If the Tenant does not pay this amount within 30 days of the written demand, the Landlords may then treat this amount as unpaid rent.

Should the Tenant not pay the utilities when due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the utilities in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, 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.

The undisputed evidence before me is that the Tenant was served the Notice on April 3, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities 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 Notice was served on April 3, 2021 by being posted to the door and placed in the mailbox, the Notice was deemed received on April 6, 2021. As such, the Tenant must have paid the rent in full by April 11, 2021 or disputed the Notice by April 12, 2021 at the latest. As the undisputed evidence is that the Tenant did not pay any rent owing or dispute the Notice, and as she did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlords' Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenant is in arrears for the rent up until the date of the hearing, I grant the Landlords a monetary award in the amount of **\$8,000.00**.

With respect to the utilities owing on the Notice, as the Landlords did not comply with the *Act* and serve a written demand for the utilities thirty days prior to service of the Notice, I do not find that the Notice is valid for ending the tenancy due to unpaid utilities. While an Order of Possession was not granted due to the outstanding utilities, as I am satisfied that the Tenant did not pay the utilities owing, I grant the Landlords a monetary award in the amount of **\$50.66**.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee.

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

Calculation of Monetary Award Payable by the Tenant to the Landlords

Item	Amount
Rental arrears for April 2021	\$1,600.00
Rental arrears for May 2021	\$1,600.00
Rental arrears for June 2021	\$1,600.00
Rental arrears for July 2021	\$1,600.00
Rental arrears for August 2021	\$1,600.00
Utilities	\$50.66

Filing Fee	\$100.00
Total Monetary Award	\$8,150.66

Conclusion

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. Should the Tenant 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 Landlords are provided with a Monetary Order in the amount of **\$8,150.66** in the above terms, and 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: August 23, 2021

Residential Tenancy Branch