



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNU-DR, OPU-DR, FFL**

CNR, OLC, RR, PSF, LRE

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Act*.

The landlord applied for:

- A monetary order for unpaid rent and utilities by direct request, pursuant to section 67;
- An order of possession for unpaid rent and utilities pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenants applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65;
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70.

The tenants did not attend this hearing scheduled for 11:00 A.M., although I left the teleconference hearing connection open throughout the hearing which ended at 11:40 p.m. to enable the tenants to call in. 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 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 each of the tenants with a copy of the Notice of Dispute Resolution Proceedings package on July 14, 2021. The landlord also testified that the tenants were aware of this hearing for the following reasons: the tenants served her with their own Notice of Dispute Resolution Proceedings package which was set for today's date and today's hearing was brought up at a hearing attended by the tenants in August of 2021. I find the tenants were duly served with the landlord's Notice of Dispute Resolution Proceedings package on July 14, 2021 in accordance with section 89 of the *Act*.

This hearing was conducted in the tenants' absence pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent and utilities?

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on April 14, 2021 with rent set at \$1,900.00 per month payable on the 15th day of each month. The landlord testified that the parties verbally agreed that the tenants would pay a half month's rent on April 14th and that the rent due date would change to the 1st of the month commencing May 1st. A security deposit of \$950.00 was collected by the landlord which she continues to hold.

The landlord testified that she received rent from mid-April to the end of April. On May 1st, the tenants paid only \$1,800.00 of the \$1,900.00 rent, leaving a shortfall of \$100.00. The tenants have not paid any further rent to the landlord and the landlord seeks to amend her request for a monetary order to include unpaid rent until the date of today's hearing.

On June 7th, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenants' door. I note the tenants filed an application to dispute the notice on June 11th, four days later. The notice states the tenants failed to pay rent in the amount of \$1,900.00 that was due on May 15, 2021 and utilities in the amount of \$167.00 following written demand that "was sent to you by text messages". The landlord testified that the tenancy agreement stated the tenants were

to pay 40% of the utilities for the house occupied by the tenants. A copy of the utility bill for the period from March 31 to May 5, 2021 was provided as evidence by the landlord.

The tenant provided a copy of the text message sent to the tenants. In the text, the landlord did not provide a copy of the utility bill, however a copy was uploaded to the Residential Tenancy Branch dispute management system. The landlord acknowledges a copy of the bill was probably not sent to the tenants by text.

The landlord testified that the parties attended an expedited hearing on August 26th, 2021 where the landlord sought an early end to the tenancy. The file number for this dispute is recorded on the cover page of this decision. When serving the tenant with notice for the expedited hearing, the landlord spoke to the tenant JR who advised the landlord that he continues to have his belongings at the rental unit and that it is not abandoned. The landlord testified that around this same time, JR's mother advised her that JR's co-tenant/spouse had moved out of the province with the tenants' children.

The landlord testified that the tenants refuse to communicate with her. The last time she spoke with the tenant JR, he specifically told her he was still living in the rental unit and that his belongings were still there.

Analysis

I find the tenants deemed served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities three days after it was posted to their door, or June 10, 2021 in accordance with sections 88 and 90 of the *Act*.

The tenants filed an application to dispute the landlord's notice to end tenancy within the 5 days as required under section 46 of the *Act*, however they failed to attend the hearing of their dispute. 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.

Consequently, I dismiss the tenants' 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.

Based on undisputed testimony of the landlord, and the documents provided, I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form. I uphold the landlord's notice and issue an Order of Possession. Since the effective (move-out) date stated on the landlord's notice has passed, I order that the Order of Possession be effective two days after service upon the tenant.

I find the tenants were obligated to pay \$1,900.00 monthly rent. Based on the undisputed evidence of the landlord, the tenants are in arrears of rent for the month of May in the amount of \$100.00. In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the *Act* I find it reasonable to grant the landlord's application to amend the Application for Dispute Resolution to include additional arrears. The landlord is granted a monetary order as follows:

Item	Amount
May rent	\$100.00
June rent	\$1,900.00
July rent	\$1,900.00
August rent	\$1,900.00
September rent	\$1,900.00
October rent	\$1,900.00
Total	\$9,600.00

The landlord seeks compensation for unpaid utilities. I have reviewed the bill supplied as evidence by the landlord and I note that it includes charges for an interval of time before the tenants occupied the rental unit (between March 31 and April 14th). As such, I find the landlord has not provided sufficient evidence to establish their claim for compensation of this utility. This portion of the landlord's application is dismissed without leave to reapply.

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

The landlord continues to hold the tenant's security and pet damage deposits totaling \$950.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Item	Amount
Arrears in rent	\$9,600.00
Filing fee	\$100.00
Less security deposit	(\$950.00)
Total	\$8,750.00

Conclusion

The tenants' application is dismissed without leave to reapply.

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

I issue a monetary order in the landlord's favour in the amount of **\$8,750.00**.

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: October 12, 2021

Residential Tenancy Branch