



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 924924 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") 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, pursuant to section 72.

AS represented the landlord in this hearing, while BL appeared for the tenants. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

At the outset of the hearing, both parties confirmed that there was a typographical error in the rental address as noted on the landlord's application. As neither party was opposed, the rental address was amended to reflect the proper address of the rental unit.

The tenant confirmed receipt of the landlord's application and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 10 Day Notice dated April 23, 2021, which was personally served on the tenant on June 7, 2021. The landlord provided proof of service in their evidentiary materials. I find the tenants duly served with the 10 day Notice in accordance with section 88 of the *Act*.

Although the landlord had applied for a monetary Order of \$11,810.00 in their initial claim, since they applied another \$15,000 in outstanding rent had become owing that was not included in the original application. The landlord also confirmed a payment of \$4,500.00 from the tenant. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$11,810.00 to \$22,310.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The landlord submitted a copy of a tenancy agreement for this tenancy. This fixed term tenancy began on October 1, 2019, and continued on a month-to-month basis after September 30, 2020. Monthly rent is set at \$3,000.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,500.00, which the landlord still holds.

The landlord served the tenants with the 10 Day Notice dated April 23, 2021. The landlord testified that the same 10 Day Notice was served on June 7, 2021 as the tenant failed to pay the outstanding rent. The landlord testified that the tenant had owed \$11,810.00 in outstanding rent, and they landlord had only received \$4,500.00 in

payment towards that amount. Since the landlord testified that the tenant has failed to pay the rent for September 2021 through to January 2022 as well, increasing the outstanding balance to \$22,310.00 as of the hearing date.

The tenant testified that they were making preparations to move out on February 27, 2022. Discussions were made during the hearing to resolve the dispute by way of a mutual resolution, but the parties were unable to achieve a mutual resolution. The tenant disputes the amount of rent owed, and feels that they should be only responsible for their portion of the rent as there were other tenants residing in the rental unit.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenants failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenants pay the outstanding rent in full. Accordingly, I find that the tenants conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 17, 2021.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenants and anyone on the premises to vacate the premises by June 17, 2021. As this has not occurred, I find that the landlord is entitled to an Order of Possession against the tenants, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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.

In light of the evidence and testimony before me, I find that the monthly rent is set at \$3,000.00 per month. Despite the tenant's testimony that rent had been paid towards the outstanding balance, I am not satisfied that the tenant had provided evidence to support this testimony other than the landlord's confirmation of the \$4,500.00 received. I find that as of the hearing date, the tenants had accrued \$22,310.00 in outstanding rent

that has not been paid, and accordingly, I allow the landlord's monetary claim for the unpaid rent.

As the landlord was successful in their application, I allow the landlord to recover the filing fee.

The landlord continues to hold the tenant's security deposit of \$1,500.00. 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.

Conclusion

I find that the landlord's 10 day Notice is valid and effective as of June 17, 2021.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant(s) and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord's monetary claim as set out in the table below. 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. The landlord is issued a monetary order in the amount of \$20,910.00.

Unpaid Rent up to January 2021	\$22,310.00
Filing Fee	100.00
Less Security Deposit Held	-1,500.00
Total Monetary Order	\$20,910.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: January 12, 2022

Residential Tenancy Branch