



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MetCap Living Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On December 3, 2021, the Landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated November 4, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, noting they held a security deposit; and
- the filing fee.

The hearing began promptly and was attended by the Landlord, but not the Tenants. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified she served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Tenants by registered mail on December 14, 2021, and provided a tracking number. Based on the Landlord's testimony, and having checked the tracking number, I find the Landlord served the Tenants in accordance with section 89 of the Act.

The Landlord submitted additional evidence to the Residential Tenancy Branch on March 16, 2022. As the Landlord testified the document was not served on the Tenants, I advised the Landlord I would not be considering it in my decision.

Preliminary Matter

The Landlord advised that as the Tenants vacated the rental unit on January 31, 2022, the Landlord was no longer seeking an order of possession. Therefore, I will not consider the Landlord's claim for an order of possession in this decision.

Issues to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent?
- 2) Is the Landlord entitled to the filing fee?

Background and Evidence

The Landlord confirmed the following particulars of the tenancy. It began on February 29, 2020; rent was \$2,250.00, due on the first of the month; and the Tenants paid a security deposit of \$1,125.00, which the Landlord has returned to the Tenants. A copy of the tenancy agreement is submitted as evidence.

The Landlord testified she served the 10 Day Notice on the Tenant by regular mail on November 4, 2021. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants have failed to pay rent in the amount of \$2,250.00 due on November 1, 2021. A copy of the 10 Day Notice was submitted as evidence, along with a proof of service form.

The Landlord submitted as evidence a Monetary Order Worksheet, indicating that the Tenants owe rent as follows:

October 2021 rent	\$850.00
November 2021 rent	\$630.00
Total	\$1,480.00

The Landlord testified that the Tenants also owe rent for January 2022, and that the total outstanding rent is as follows; the Landlord affirmed that the rent increased to \$2,283.75 in January 2022:

Month	Rent owing	Rent paid	Monthly balance owing
October 2021	\$2,250.00	\$1,400.00	\$850.00
November 2021	\$2,250.00	\$1,620.00	\$630.00
December 2021	\$2,250.00	\$2,250.00	\$0.00
January 2022	\$2,283.75	\$0.00	\$2,283.75
Total owing			\$3,763.75

A copy of the ledger is submitted as evidence, showing charges and payments through to December 1, 2021, and supports the Landlord's testimony and the Monetary Order Worksheet.

Analysis

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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 Landlord's affirmed undisputed testimony, I find the Landlord served the 10 Day Notice on the Tenants on November 4, 2021 in accordance with section 88 of the Act, and deem it received by the Tenants on November 9, 2021, in accordance with section 90.

I find that the Tenants did not file an application for dispute resolution within 5 days of November 9, 2021, the timeline granted under section 46(4) of the Act. Accordingly, I find that the Tenants are conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 19, 2021.

As the Landlord has provided affirmed undisputed testimony that the Tenants vacated the rental unit on January 31, 2022, I find the tenancy ended on January 31, 2022, pursuant to section 68(2)(a) of the Act.

Based on the Landlord's undisputed affirmed testimony and documentary evidence that the Tenants owe \$3,763.75 in unpaid rent for the months of October and November 2021 and January 2022, I find the Landlord is entitled to a monetary award of \$3,763.75, in accordance with section 55(4) and 67 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in her application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

I find the Landlord is entitled to a total monetary award of \$3,863.75, comprised of \$3,763.75 in unpaid rent, and \$100.00 for the filing fee.

Conclusion

The Landlord's application is granted.

The Landlord is granted a monetary order in the amount of \$3,863.75 for unpaid rent and recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 5, 2022

Residential Tenancy Branch