



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPC, MNRL, MNDCL, OPR**

Introduction

This hearing dealt with the Landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
3. An Order of Possession for a One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 55 of the Act;
4. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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 Landlords and I were the only ones who had called into this teleconference. The Landlords were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlords that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlords testified that they were not recording this dispute resolution hearing.

The Landlords served the Tenant with the 10 Day Notice on February 4, 2022 by posting the notice on the Tenant's door. The Landlords uploaded a Proof of Service #RTB-34 form attesting to service of the 10 Day Notice. I find that the 10 Day Notice was deemed served on the Tenant on February 7, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlords served the Tenant with the One Month Notice on February 4, 2022 by posting the notice on the Tenant's door. The Landlords uploaded a Proof of Service #RTB-34 form attesting to service of the One Month Notice. I find that the One Month Notice was deemed served on the Tenant on February 7, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlords testified that they served the Tenant with an Amendment for this matter on April 25, 2022 by Canada Post registered mail. The Landlords provided the Canada Post registered mail tracking number as evidence of proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the Amendment five days after mailing on April 30, 2022 in accordance with Sections 88 and 90 of the Act.

The Landlords testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN and evidence on May 22, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlords provided the Canada Post registered mail tracking number as evidence of proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on May 27, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Monetary Amount

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, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlords' request to amend their original application from \$3,675.00 to \$12,875.00 to reflect the unpaid rent that became

owing by the time this hearing was convened, and to amend the outstanding utilities portion from \$325.11 to \$1,703.06 to reflect the unpaid utilities that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for a 10 Day Notice?
2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords entitled to an Order of Possession for a One Month Notice?
4. Are the Landlords entitled to an Order for compensation for a monetary loss or other money owed?
5. Are the Landlords entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlords confirmed that this tenancy began as a fixed term tenancy on December 1, 2021. The fixed term is to end on December 1, 2022. Monthly rent is \$2,450.00 payable on the first day of each month. A security deposit of \$1,225.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlords were ending the tenancy was because the Tenant owed \$3,675.00 in outstanding rent on February 1, 2022, and the Tenant owed \$325.11 in outstanding utilities on February 1, 2022. The effective date of the 10 Day Notice was February 12, 2022.

The Landlords applied for a monetary compensation claim, but their monetary request stems from the outstanding rent and utilities owing, rather than damages to the rental unit. The Landlords state that the Tenant has not allowed them to do any inspections.

The Landlords are seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$12,875.00, and unpaid utilities in the amount of \$1,703.06.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlords' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *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.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

- 46** (1) *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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (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.*

I find that the Landlords' 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Pursuant to Section 26(1) of the Act, the Tenant is required to pay rent when it is due whether or not the Landlords comply with this Act, the regulations or the tenancy agreement.

After receiving the 10 Day Notice, the Tenant had five days to pay the outstanding rent or apply for dispute resolution. The Tenant did neither of these steps. I find that the Tenant has outstanding rent owing from January 2022, and she has not paid any rent since February 2022. I find pursuant to Section 46(5)(a) of the Act, that the Tenant is conclusively presumed to have accepted that the tenancy has ended and must vacate the rental unit. I uphold the Landlords' 10 Day Notice.

I must consider if the Landlords are entitled to an Order of Possession and a Monetary Order for unpaid rent. Sections 55(2) and 55(4) of the Act read as follows:

Order of possession for the landlord

- 55** (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
 - (a) *grant an order of possession, and*
 - (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

The Tenant did not apply for dispute resolution, and the time to apply has expired. I have upheld the Landlords' 10 Day Notice and I find the total outstanding rent is \$12,875.00 and the total outstanding utilities are \$1,703.06. I find the Landlords are entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act and are entitled to a Monetary Order to recover the outstanding rent and utilities amounts pursuant to Section 55(4)(b) of the Act. Further, pursuant to Section 72(2)(b) of the Act, I Order that the Landlords are authorized to retain the security deposit held by the Landlords in partial satisfaction of the monetary award. Having been successful, I find the Landlords are entitled to recover the application filing fee paid to start this application. The Landlords' Monetary Award is calculated as follows:

Monetary Award

Total Outstanding Rent:	\$12,875.00
Total Outstanding Utilities:	\$1,703.06
Less security deposit:	-\$1,225.00
Plus application filing fee	\$100.00
TOTAL OWING:	\$13,453.06

As the tenancy has ended, the merits of the One Month Notice were not considered in this matter, and the One Month Notice was cancelled. The Landlords brought witnesses to give testimony about the One Month Notice, but their testimony was not needed. The Landlords testified that, at present, any outstanding amounts owed by the Tenant have to do with unpaid rent and unpaid utilities, their claim for compensation for a monetary loss or other money owed is withdrawn.

Conclusion

The Landlords are granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlords must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlords in the amount of \$13,453.06. 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 of British Columbia 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 Act.

Dated: June 06, 2022

Residential Tenancy Branch