



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on July 11, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing. The Landlord testified that she sent the application package, along with supporting evidence to the Tenants on March 4, 2022, by registered mail. Proof of mailing was provided into evidence. I find the Tenants are deemed to have received this package on March 9, 2022, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that 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.

I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord stated that monthly rent is set at \$1,600.00 and is due on the last day of each month. The Landlord stated that she currently holds a security deposit in the amount of \$800.00.

The Landlord testified that the Tenant has a long history of missed rent payments dating back to November 2021. The Landlord provided a detailed worksheet indicating the amounts due and the amounts paid each month.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was sent to the Tenant by registered mail on February 11, 2022. Proof of mailing was provided. The 10 day Notice specified that the Tenant owed \$3,000.00 in rent at that time. The Landlord stated that the Tenants have only paid \$450.00 per month, since December, and the amounts continue to accrue. The Landlord provided a spreadsheet to itemize what is owed, and this was current as of June 2022. The Landlord stated that even more rent has accrued since the last spreadsheet was uploaded, and the Tenants currently owe \$8,750.00 in rent.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent. When a Tenant does not pay rent when due, section 46(1) of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When

a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenants had a balance of unpaid rent in the amount of \$3,000.00 at the time the 10 Day Notice was issued. The 10 Day Notice was sent to the Tenant on February 11, 2022 by registered mail. Pursuant to section 90 of the *Act*, I find the Tenants are deemed to have received this document 5 days after it was mailed.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the Tenants did either. As such, I find the Tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is sufficient evidence from the Landlord's to demonstrate that the Tenants owe and have failed to pay rent totalling \$8,750.00, as of the date of this hearing.

The Landlord requested that they be able to retain the security deposit of \$800.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent	\$8,750.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$800.00)
TOTAL:	\$8,050.00

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$8,050.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: July 11, 2022

Residential Tenancy Branch