



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on January 13, 2021 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent; and
- a monetary order for unpaid rent;

The hearing was scheduled for 9:30AM on April 27, 2021 as a teleconference hearing. The Landlords and the Landlords' Agent F.B. appeared at the appointed date and time of the hearing. No one appeared for the Tenant. The conference call line remained open and was monitored for 13 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords, their Agent, and I were the only persons who had called into this teleconference.

The Landlords testified the Application, the Interim Decision, and documentary evidence package were served to the Tenant by registered mail on February 4, 2021. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the above mentioned documents on February 9, 2021, the fifth day after their registered mailing.

The Landlords and their Agent were given an 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. Are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?

Background and Evidence

The Landlords stated that the tenancy started on November 1, 2020. Currently, the Tenant is required to pay rent in the amount of \$1,500.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00 which the Landlords continue to hold. The Landlords stated that the Tenant continues to occupy the rental unit.

The Landlords testified the Tenant did not pay rent when due in December 2020. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 4, 2020 (the "10 Day Notice") with an effective vacancy date of December 14, 2020. At that time, rent in the amount of \$1,500.00 was outstanding. The Landlords testified they served the 10 Day Notice to the Tenant by posting it to the Tenant's door on December 4, 2020. The Landlord provided a picture, and a witnessed proof of service in support.

The Landlords stated that the Tenant has made no payments towards the outstanding balance of rent indicated on the 10 Day Notice. In addition, the Landlords testified that the Tenant also failed to pay rent when due for January, February, March, and April 2021. The Landlords stated that currently, rent in the amount of \$7,500.00 is outstanding, and the Tenant continues to occupy the rental unit.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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* states 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.

The Landlords served the Tenant with the 10 Day Notice dated December 4, 2020 with an effective vacancy date of December 14, 2021, by posting it to the Tenant's door. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on December 7, 2020.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until December 12, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlords' undisputed testimony that after service of the 10 Day Notice, the Tenant has made no payments towards the amount of unpaid rent. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, December 17, 2020, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$7,500.00. I find it appropriate in the circumstances to order that the Landlords are entitled to retain the security deposit held in the amount of \$750.00 in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$6,750.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$7,500.00
<i>LESS</i> security deposit:	-\$750.00)
TOTAL:	\$6,750.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$6,750.00. 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 27, 2021

Residential Tenancy Branch