



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP c/o Metcap Living Management
Inc and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on July 28, 2021 seeking an order of possession for the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 26, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenant did not attend.

Preliminary Matter

The landlord gave the tenants notice of this dispute resolution hearing via registered mail, along with their prepared evidence. They sent this on August 23, 2021, after receiving the notice from the Residential Tenancy Branch. The package sent was returned to the landlord on October 25.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that the address they provided on the registered mail package was that of the rental unit, still occupied by the tenant at the time of its mailing. They referenced the postal code, shown on the provided receipt. They provided a Canada Post registered mail tracking number. They also gave an account of the movement of the mail.

I find the tracking history showed that the tenant refused the registered mail package; therefore, I find they avoided service.

Based on the submissions of the landlord, I accept that they served the tenant notice of this hearing and the landlord's evidence in a manner complying with s. 89(1)(c) of the *Act*, and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement appears in the landlord's evidence. The tenancy began on May 1, 2021, with the rent amount of \$1,738 per month. The tenant paid the initial security deposit of \$869 and signed the agreement on April 12, 2021.

The landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") issued on July 9, 2021. That was for the outstanding rent amount of \$3,476, due on July 1, 2021. The landlord also provided a document entitled Proof of Service. This sets out that the landlord left the 10-Day Notice in the mailbox or mail slot of the rental unit.

The 10-Day Notice states that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, July 24, 2021.

They also applied for a monetary order for \$2,500.12 in unpaid rent for August through to November 2021. In the hearing, the landlord provided details on their calculation,

referring to the provided ledger submitted on November 21. This amount includes a single \$25 NSF fee as shown in the ledger.

Analysis

From the testimony of the landlord, I am satisfied that a tenancy agreement was in place. The agreement in the evidence shows the specific term of rental payment and amount.

I accept the evidence before me that the tenant failed to pay the rent owed in full by July 15, 2021. This date accounts for the three-day deemed service provision in s. 90 of the *Act*. The tenant did not pay the rent amount within the five days granted under s. 46(4) of the *Act*. Likewise, the tenant did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 24, 2021.

The landlord provided testimony on the account in question and the accumulation of the amount. As presented, I find the amount of \$3,500.12 is accurate. By Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I accept the landlord's amendment to their Application. Subsequent rent amounts are circumstances that could reasonably be anticipated in this situation where the tenant is overstaying after the effective tenancy end date.

The hearing itself was scheduled on November 26, 2021, and the agent of the landlord stated that the tenant was still living in the rental unit on that date. The tenant has been overholding since the effective date of the end of tenancy. For this reason, I grant the landlord the full monthly rental amounts of \$3,500.12.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$3,500.12. As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

Pursuant to sections 55(4)(b) and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,600.12 for rent owed and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms, and they must serve the tenant 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 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 s. 9.1(1) of the *Act*.

Dated: November 26, 2021

Residential Tenancy Branch