



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City of Vancouver
and [Tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on August 17, 2021 seeking an order of possession for the rental unit and to recover the money for unpaid rent. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 20, 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

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that the document was served in a method allowed under s. 89(2) of the *Act*, and I must accept that evidence.

The Landlord provided testimony and evidence that they used registered mail for this purpose. They provided a registered mail tracking number and stated the item was returned to them, undelivered after the attempt at delivery did not result in the Tenant picking up the mail. They confirmed the Tenant still lives in the rental unit, and that the package containing the notice of this hearing, and the Landlord’s evidence, was refused. I accept the evidence and so find the Tenant refused to retrieve the registered mail.

Based on the submissions of the Landlord, I accept they served the Tenant notice of this hearing and their Application in a manner complying with s. 89(2)(b) of the *Act*, and the hearing proceeded in the Tenant's absence. I deem the documents received on September 8, 2021, as per s. 90(a) of the *Act*.

Issues 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. 67 of the *Act*?

Background and Evidence

The Landlord spoke to the terms of the tenancy agreement, a copy of which appeared in their evidence. The tenancy began on April 1, 2014, with the rent amount of \$700 payable on the first of each month. The agreement shows the Tenant paid a \$350 deposit on April 1, 2014. The Landlord and the Tenant signed the agreement on March 28, 2014.

The Landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). They presented that they served this to the Tenant on August 5, 2021. A witness attested to this service on the door of the rental unit on that date, providing their signature on a Proof of Service document to officially state this.

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, August 19, 2021.

The reason for the Landlord serving the 10 Day Notice is accumulated unpaid rent, this was for \$700 due on August 1, 2021.

They also applied for a monetary order for \$700 in unpaid rent for August 2021.

The Landlord amended their monetary claim in the hearing to account for subsequent months of rent. The Tenant paid no rent in September through to December 2021. This brings the total amount of rent owing, for 5 months, to \$3,500.

Analysis

From the testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of rental payment and amount. The Tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by August 1, 2021, within the five days granted under s. 46(4) of the *Act*. 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, August 19, 2021. The Landlord in the hearing provided their most recent communication with Tenant was approximately 6 weeks prior to the hearing, and the Tenant ignored the Landlord.

The Landlord provided testimony and evidence on the account in question and the accumulation of the amount. As presented, I find the Landlord's claimed amount is \$3,500. By Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I accept the Landlord's amendment to their Application. The Tenant did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount owing.

The hearing itself was scheduled on December 20, 2021, and 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, August 19, 2021.

I find the Landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$3,500. The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord has established a claim of \$3,500. After setting off the security deposit, there is a balance of \$3,150. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$3,150 as compensation for the August 2021 to December 2021 rent amounts.

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, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,150 for rent owed for August through to December 2021. The Landlord is provided with this Order in the above terms and 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 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: December 20, 2021

Residential Tenancy Branch