



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR MNU-DR FFL

Introduction

The landlords seek an order of possession and a monetary order for unpaid rent pursuant to sections 55(2)(b) and 55(4) of the *Residential Tenancy Act* ("Act"). In addition, the landlords seek to recover the cost of the application filing fee.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

The landlords attended the hearing, but the respondent tenant did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's *Rules of Procedure*, and there must be evidence to support a finding that service occurred.

The landlords testified under oath that they served a copy of the Notice of Dispute Resolution Proceeding by both (1) posting it on the door of the rental unit on or about September 16, 2021, and (2) sending it by Canada Post registered mail on September 19, 2021. The registered mail tracking number was read into evidence. Canada Post's "Canada Post – Track a package by tracking number" website indicates that a notice card was left at the rental unit on September 21, 2021. As of October 7, 2021, the mail went unclaimed and was returned to the sender. It should be noted that refusing to receive documents does not nullify service of those documents.

In the absence of any evidence to the contrary, it is my finding that service was properly executed. Last, it is worth noting that, according to internal file notes, the tenant contacted the Residential Tenancy Branch on September 27, 2021 at 10:06 AM. It is therefore reasonable to conclude that the tenant was fully aware that an upcoming hearing of this matter would be occurring. Thus, it is my conclusion and finding that the tenant was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for him to participate fully in these proceedings.

Issues

1. Are the landlords entitled to an order of possession and a monetary order?
2. Are the landlords entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on November 15, 2016. Monthly rent was \$3,250.00 and this was due on the first day of the month. The tenant paid a security deposit of \$3,000.00 and a pet damage deposit of \$3,000.00. (These dollar amounts are not typographical errors. The security and pet damage deposits exceed the amounts allowed under [section 19\(1\)](#) of the Act. However, the landlords explained that these amounts were set by the tenant.) A copy of the written tenancy agreement is in evidence.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) was served on the tenant by being attached to a door of the rental unit. Both the Notice and Proof of Service documentary evidence were in evidence.

To the best of the landlords’ knowledge, the tenant abandoned the rental unit on or about September 21, 2021. Given this undisputed testimony, it is my finding that the tenancy ended on that date, and in no case later than September 30, 2021.

Unpaid rent (including rent for September 2021) and unpaid utilities are \$9,958.30. This, in addition to the \$100.00 application filing fee, are the amounts sought.

Analysis

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full.

If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date as indicated on the notice ([section 46\(5\)](#) of the Act).

A landlord may seek an order of possession and a monetary order if a tenant has not disputed the notice and the time for filing an application to dispute that notice has passed ([sections 55\(2\)\(b\) and 55\(4\)](#) of the Act).

In this dispute, the tenant was served a copy of the Notice but failed to either pay the amount owing or dispute the Notice. As such, the tenant is presumed to have accepted the Notice.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have discharged their onus of proving their claim for compensation in the amount of \$9,958.30.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application, they are awarded \$100.00 in compensation to cover the cost of the application filing fee. A total of \$10,058.30 is therefore awarded to the landlords.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I hereby authorize and order the landlords to retain the tenant’s \$3,000.00 security deposit and his \$3,000.00 pet damage deposit in partial satisfaction of the above-noted award.

The balance of the amount owing, \$4,058.30, is granted to the landlords by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision to the landlords. As explained, should the tenant refuse to pay the balance of \$4,058.30 then the landlords must serve a copy of the monetary order on the tenant and then seek to enforce the order in the Provincial Court of British Columbia.

Last, pursuant to section 55(2)(b) of the Act, the landlords are granted an order of possession of the rental unit. While this order is probably unnecessary given the abandonment of the property, the landlords nevertheless retain the right to serve this order at the rental unit should it be necessary. A copy of the order of possession is also issued in conjunction with this decision, to the landlords.

Conclusion

The landlords' application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 14, 2022

Residential Tenancy Branch