



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on November 25, 2021, seeking an order of possession for the rental unit and a monetary order to recover the money for unpaid rent.

This participatory hearing was convened after the issuance of a January 11, 2022, Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s (the “**RTB**”) direct request proceedings, as had been originally request by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as the Adjudicator could not match either of the individual landlords named on the Application for Dispute to the business landlord’s name. Additionally, the date on the 10-Day Notice did not match the Proof of Service Notice to End Tenancy.

The Property Manager (agent) attended the hearing on behalf of the Landlord. The agent will be referred to as “landlord”.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “**Act**”) on February 3, 2022. In the conference call hearing, I explained the process and provided the attending party the opportunity to ask questions.

This hearing dealt with the landlords’ application pursuant to the *Residential Tenancy Act* (the “**Act**”) for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$7100.00 pursuant to section 55 and 67.

The landlord testified he served the tenants personally with the Notice of Dispute Resolution form and evidence package on January 13, 2022. Service was witnessed by a third party. Based on the affirmed testimony of the landlord, I find that the tenant was served with proper notice of this participatory hearing and did not attend the hearing.

Preliminary Issue- Amendment of Rent Owing

The landlord applied for a monetary order for unpaid rent in the amount of \$2300.00 as of November 15, 2021. In the hearing, the landlord stated the amount does not include outstanding rent for December 2021, January 2022, and February 2022. The landlord requests an amendment of the monetary order to reflect the current outstanding balance of \$7100.00. The landlord provided a ledger as proof of rent owing through January 1, 2022, and provided affirmed testimony that February 1, 2022, rent was not paid.

Policy Guideline #23 “Amending an Application for Dispute Resolution” subsection F provides:

F. PREDICTABLE AMENDMENTS

In accordance with rule 4. 2 (Amending an application at the hearing), when the amount of rent owing has increased since the time the application initially was filed, or in other circumstances that can reasonably be anticipated, the application may be amended through an oral request at the hearing. If such an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be filed or served.

I grant the landlord’s request to amend the application to reflect the current outstanding balance of \$7100.00

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order in the amount of \$7100;

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting May 1, 2021. Monthly rent is \$1600.00 and is payable on the first of each month. The tenant paid the landlords a security deposit of \$ \$800.00. The landlord still retains the security deposit in trust.

The landlord applied for an Order of Possession pursuant to the 10-Day Notice issued to the tenant on November 15, 2021, for unpaid rent in the amount, \$2300.00, due on

November 1, 2021. This amount accrued from unpaid rent from October (\$700.00) and November (\$1600.00).

The 10-Day Notice was served by “attaching a copy to the door or other conspicuous place where the tenant resides”. The Proof of Service Document initially submitted to the RTB had a clerical error, an incorrect service date of “October 15, 2021” and should have read “November 15, 2021”. The date has been amended to reflect the correct service date. The landlord also submitted a correction letter signed by both the server and the witness. As the Notice was served attached to the door, the tenant’s signature is not on the service document.

The landlord stated unpaid rent continues to accrue. No further rent has been paid for December (\$1600.00), January (\$1600.00) and February (\$1600.00). The landlord is requesting a monetary order in the amount of \$7100.00.

The tenants remain in the rental unit. The landlord states the landlord has been very patient with the tenants, trying to work with them on payment of back rent but have been unsuccessful. Ultimately, the amount of outstanding rent is increasing exponentially, and the landlord felt they were out of options.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement in concert with the landlord’s oral testimony on its’ terms and conditions. I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the undisputed testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment: rent is payable, in full, on the 1st day of each month.

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.

Following this, s. 46(4) says that within five (5) days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case, the notice is of no force or effect, or dispute the notice by making an application for dispute resolution.

Next, s. 46(5) states that if a tenant received a notice under this section and does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit identified in the notice by that date.

Based on the undisputed submissions by the landlord, I find the landlord served the 10-Day Notice to the tenant by attaching a copy to the door of the rental unit on November 15, 2021. The tenant is deemed served November 18, 2021. The effective date of the Notice was November 25, 2021. The tenant failed to pay the rent owing by November 21, 2021, within the five (5) days granted under s. 46(4) of the *Act*. There is no evidence before me that the tenant disputed the 10-Day Notice within the five (5) 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 November 25, 2021 on the 10-Day Notice. Since the tenants remain in the rental unit, I grant an Order of Possession to the landlord.

The landlord's evidence on the monetary claim is not disputed. I grant the landlord the full amount claimed - \$7100.00- for rent owed as follows:

MONTH	RENT DUE	BALANCE OWING
October 2021	\$ 700.00	\$ 700.00
November 2021	\$1600.00	\$2300.00
December 2021	\$1600.00	\$3900.00
January 2022	\$1600.00	\$5500.00
February 2022	\$1600.00	\$7100.00

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$7100.00. After setting off the \$800.00 security deposit, there is a balance of \$6300.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$6300.00 as compensation for the October 2021 through February 2022 (inclusive) unpaid rent amounts.

I find the tenant is obligated to pay the landlord \$6300.00 as per the tenancy agreement.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two (2) days after service** of these order(s) on the tenant. Should the tenant fail to comply with this Order, this Order may be filed with the Supreme Court of British Columbia and be enforced as an order of that Court.

Pursuant to section 55 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$6300.00. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 3, 2022

Residential Tenancy Branch