



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wakesiah Apartments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR-MT MNRT RP OLC PSF OPR-DR MNR-DR FFL

Introduction

The landlord seeks an order of possession for unpaid rent and a monetary order for unpaid under the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks recovery of the application filing fee. By way of cross-application the tenants sought to dispute two notices to end tenancy for unpaid rent, along with four additional, unrelated claims of relief under the Act.

Only the landlord's property manager attended the hearing on February 11, 2022 at 11:00 AM. The hearing ended at 11:07 AM with neither tenant having attended.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Under oath, the landlord's property manager gave evidence that the tenancy began April 1, 2021. Monthly rent of \$1,495.00 was, and is, due on the first day of the month. The tenants paid a security deposit of \$747.50 which the landlord currently holds in trust. A copy of the written tenancy agreement was entered into evidence.

On August 6, 2021, the landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the "Notice") on the door of the rental unit. A copy of the Notice and a proof of service document were submitted into evidence. The Notice was undisputed by the tenants and the unpaid portion of rent in the amount of \$747.50 was not paid.

Two subsequent *10 Day Notices to End Tenancy for Unpaid Rent* were given to the tenants on September 8, 2021 and on October 6, 2021. It should be noted that the tenants missed the deadline to apply to dispute the latter two notices to end tenancy, but nonetheless made applications to dispute those notices.

The property manager testified that as of February 1, 2022, the rent arrears are \$8,970.00. This amount does not include late fees, which the landlord is not seeking in this application. (A copy of a ledger showing the accruing arrears was in evidence.) Last, the property manager testified that as of today's date the tenants continue to reside in the rental unit.

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 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 tenants failed to pay rent in full when it was due on August 1, 2021. They have failed to pay rent on several occasions since. The landlord issued a notice to end the tenancy for unpaid rent on August 6, 2021. The tenants failed to pay the rent owing and failed to dispute the Notice. As such, it is my finding that the tenants accepted the Notice and were required to vacate. They have failed to do so and continue to occupy the rental unit without paying rent. Last, I have carefully reviewed the Notice and find that it complies with the form and content requirements set out in section 52 of the Act.

Pursuant to section 55 of the Act, the landlord is granted an order of possession, which must be served on the tenants, and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The landlord is awarded \$8,970.00 in compensation for unpaid rent and an additional \$100.00 in compensation for the cost of the application filing fee (pursuant to section 72 of the Act) for a total of \$9,070.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I authorize the landlord to retain the tenants’ security deposit of \$747.50 in partial satisfaction of the above-noted award.

The landlord is granted a monetary order in the amount of \$8,322.50, which must be served on the tenants. If the tenants fail to pay the landlord the amount owed within 15 days of receiving a copy of either this decision or the monetary order (whichever is received first), then the landlord may file and enforce the order in the Provincial Court of British Columbia.

Conclusion

The landlord’s application is granted.

The tenants’ applications are dismissed, without leave to reapply.

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

Dated: February 11, 2022

Residential Tenancy Branch