



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 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 October 12, 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 February 22, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

An agent for the Landlord (hereinafter, the "Landlord") attended the telephone conference all hearing; the Tenants (hereinafter, the "Tenant") did not attend.

Preliminary Matter

The Landlord presented evidence that they delivered notice of this dispute resolution, as well as their evidence, by registered mail. This was on October 29, 2021, two days after they received the document confirming this hearing from the Residential Tenancy Branch. They provided receipts and tracking information from Canada Post to show this. The Landlord has had no contact with the Tenant and has not visited to the rental unit.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by s. 89(2)(c) the *Act*. I consider the document received by the tenant on November 3, 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*?

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

Background and Evidence

The Landlord spoke to the terms of the tenancy agreement, a copy of which they provided as evidence. The tenancy began on August 1, 2013, with the rent amount of \$1,025 payable on the 1st of each month. There was a payment of \$535 for a security deposit. Over time, the rent increased to \$1,279.67, and in January 2022 to \$1,298.86.

The Landlord seeks an Order of Possession pursuant to the 10-Day Notice served to the Tenant via their mail slot on September 7, 2021. They also seek a monetary order for \$9,071.07 in unpaid rent, and three instances of \$25 NSF fees. The Landlord provided an updated ledger showing all transactions within the timeframe in question.

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, September 22, 2021. There is no record of the Tenant subsequently paying the rent or applying for dispute resolution.

The reason for the Landlord serving the 10-Day Notice was the accumulated unpaid rent from August and September 2021, for \$2,559.34.

In summary, the Landlord is claiming rental amounts for the months of August 2021 to February 2022, for \$9,071.07.

Analysis

I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by September 15, 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, with deemed service making the five-day period end on September 15, 2021..

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, September 22, 2021. The Landlord provided updated evidence on the account in question and the accumulation of unpaid rent. As presented, I find the amount of \$9,071.07 is accurate.

The Landlord applied to use the security deposit they are holding towards the rent amounts owing. The tenancy has not yet ended; this precludes the Landlord from dispensing with the security deposit until that time. I find the landlord is not entitled to keep the security deposit; their claim to it is premature because the tenancy has not yet ended.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$9,071.07. As the Landlord is successful in this Application, I find that the Landlord is entitled to recover the \$100 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 s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$9,171.07 for rent owed for August 2021 through to February 2022 and a recovery of the filing fee for this hearing application. 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: February 22, 2022