



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PR Lotus Hotel Limited Partnership; Pro Group Global Communications Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for unpaid rent or utilities, pursuant to sections 46 and 55;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference connection open until 9:42 a.m. to enable the tenant to call into this hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord’s representatives and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by its counsel, IA and a former property manager, JK. Counsel advised that the Notice of Dispute Resolution Proceedings was sent to the tenant via registered mail on January 28, 2022 and provided the tracking number for the mailing, recorded on the cover page of this decision. The tenant is deemed served with the Notice of Dispute Resolution Proceedings package five days after it was mailed, on February 02, 2022 pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary order for unpaid rent?
Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on December 01, 2011 with rent set at \$600.00 per month payable on the first day of each

month. Rent is currently \$698.00 per month. At the commencement of the tenancy, the landlord collected a security deposit in the amount of \$300.00.

The landlord provided a ledger to show rent payments dating back to November 01, 2014. According to the ledger, the last rent cheque was received on August 08, 2021. At that time, the tenant's account was \$37.00 credit. The tenant stopped paying rent for the remaining months and on December 30, 2021 the landlord sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities ("notice") by registered mail. The tracking number for the mailing is recorded on the cover page of this decision. The notice states that the tenant failed pay rent in the amount of \$4,151.00 that was due on December 01, 2021.

Landlord's counsel submits that the property was sold on February 14, 2022. The tenant's security deposit was given to the purchaser of the property upon sale. Counsel submits that the tenant has not paid any rent since being served with the notice to end tenancy, up to and including the day the property was sold. Landlord's counsel submit that the tenant is still occupying the rental unit.

Analysis

Pursuant to section 55(2)(b) of the Act, a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Pursuant to section 55(4), In the circumstances described above, the director may, without any further dispute resolution process under Part 5, grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In the case before me, I find the tenant was deemed served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities five days after it was sent by registered mail, or January 04, 2022 pursuant to sections 88 and 90 of the Act. The tenant did not file an application to dispute the landlord's notice to end tenancy within five days as required under section 46 of the Act and the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice, or January 14, 2022. As the tenant has not yet vacated the premises, I find that the landlord is entitled to an Order of Possession effective 2 days after service pursuant to sections 46(5) and 55.

I find the tenant was obligated to pay rent in the amount of \$681.00 per month and failed to do so from July 01, 2021 onward. I have reviewed the landlord's ledger and find the landlord is entitled to compensation for rent for the amount stated in the notice to end tenancy, of \$4,151.00.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises. As the tenant continued to occupy the rental unit after the tenancy ended, the tenant is considered an overholding tenant as defined by section 57 of the *Act*. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. I am satisfied the landlord is entitled to additional rent for all of January 2022 and the first 14 days of February 2022. [$\$681.00 / 28 \text{ (days)} \times 14 \text{ (days)} = \340.50].

The landlord's application was successful and the filing fee of \$100.00 will be recovered from the tenant.

Item	Amount
Rent from July 01, 2021 to December 31, 2021	\$4,151.00
Overholding rent for January, 2022	\$681.00
Pro-rated rent from February 01 to February 14, 2022	\$340.50
Filing fee	\$100.00
Total	\$5,272.50

Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$5,272.50**.

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 25, 2022