



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E. Alsilmi and Group Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, SA, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. 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 Property Manager and I were the only ones who had called into this teleconference. The Property Manager was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Property Manager that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord personally served the 10 Day Notice on November 3, 2021 and provided proof of service of that document. I find that the 10 Day Notice was served on the Tenants on November 3, 2021 pursuant to Section 88(a) of the Act.

The Property Manager testified that the Landlord served the Tenants with the Notice of Dispute Resolution Proceeding package for this hearing on December 22, 2021 by Canada Post registered mail (the “NoDRP package”). The Property Manager referred me to the Canada Post registered mail tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenants were deemed served with the NoDRP package five days after mailing them, on December 27, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Amend Party Name

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Landlord’s application, the Landlord is named by an individual name and not the corporate name of the Landlord. In the hearing, the Property Manager provided the business name of the Landlord which is the name used in the tenancy agreement for this matter. I asked the Property Manager if I had her agreement to amend the Landlord's party name in the application. The Property Manager agreed, and the correct Landlord name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Landlord is properly named as the company name and not the owner’s name. I amended the Landlord's name and it is reflected in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for a 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Property Manager confirmed that this tenancy began as a fixed term tenancy on October 1, 2021. The fixed term ends on September 30, 2022, then the tenancy would continue on a month-to-month basis. Monthly rent is \$1,900.00 payable on the first day of each month. A security deposit of \$950.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$1,900.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 16, 2021. The Property Manager testified that November's rent was unpaid on November 3, 2021, when the 10 Day Notice was served. The Property Manager stated that the Tenants paid November's rent on November 15, 2021. The Tenants wrote a non-sufficient funds cheque for February 2022's rent, but they got February's rent to the Landlord on February 3.

The Property Manager says she knocks on the Tenants' door, she can hear them in the rental unit, but they do not answer the door. She regrets the lack of communication with the Tenants. The Property Manager is seeking an Order of Possession for the unpaid rent in November 2021.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, *a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

46 (1) *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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

(4) *Within 5 days after receiving a notice under this section, the tenant may*

(a) *pay the overdue rent, in which case the notice has no effect, or*

(b) *dispute the notice by making an application for dispute resolution.*

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

(b) *must vacate the rental unit to which the notice relates by that date.*

...

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act which states:

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) *be signed and dated by the landlord or tenant giving the notice,*

(b) *give the address of the rental unit,*

(c) *state the effective date of the notice,*

(d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*

...

(e) *when given by a landlord, be in the approved form.*

The Tenants were served with the 10 Day Notice on November 3, 2021. The Tenants had until November 8, 2021 to either pay the outstanding rent or apply for dispute resolution. The Tenants did neither. The Tenants did not attend this hearing to give evidence about the outstanding rent in November 2021 although provided notice of this hearing date. Pursuant to Section 46(5)(a) of the Act, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date, which was November 16, 2021. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *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;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I find that the time to apply for dispute resolution has expired for the Tenants, accordingly, the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act which will be effective two (2) days after service on the Tenants. Since the Landlord was successful in their claim, I grant them recovery of the application filing fee according to Section 72(1) of the Act. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to recover the application filing fee from the security deposit held by the Landlord.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Landlord may retain \$100.00 from the security deposit held by the Landlord to recover their application filing fee in this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 29, 2022

Residential Tenancy Branch