



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant; and
- a monetary order for unpaid rent.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated December 7, 2021, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agent (agent) attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on December 10, 2021. The landlord filed the Canada Post receipt showing the tracking number as proof of service.

Based on the landlord's testimony and evidence, I find the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent and to monetary compensation for unpaid rent and NSF/ late fees?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on July 1, 2021, monthly rent payable by the tenant is \$2,475, due on the 1st day of the month, and a security deposit of \$1,237.50 was paid by the tenant at the beginning of the tenancy. The written tenancy agreement also requires the tenant to pay \$25 for late rent payments and NSF charges.

The agent submitted that on October 8, 2021, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$2,475 as of October 1, 2021. The effective vacancy date listed on the Notice was October 22, 2021. Filed in evidence was a copy of the Notice and proof of service of the Notice.

The agent stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice within 5 days, or at all. In addition, the tenant did not make the monthly rent payment in November and December 2021, or for February 2022, according to the landlord. The agent submitted that the tenant made rent payments for January and March, 2022, and as of the date of the hearing, the tenant now owes the amount of \$9,900 in unpaid monthly rent and \$100 in NSF/late fee charges.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or October 22, 2021.

As a result, I order the tenancy ended on October 22, 2021, and grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application, to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that, although the tenant made two rent payments to the landlord, the tenant owes the amount of unpaid rent of **\$9,900** and NSF/late charges of **\$100** allowed under the tenancy agreement.

I find the landlord has established a monetary claim of **\$10,000**, for the unpaid monthly rent and NSF/late charges, as noted above.

I grant the landlord a **monetary order** pursuant to section 67 of the Act for the amount of **\$10,000**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and NSF/late charges has been granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 18, 2022

Residential Tenancy Branch