



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peter Wall Mansion and Estates
Beaconhill and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

On January 6, 2022 the Landlord submitted an Application for Dispute Resolution by direct request, (the “Application”), which was subsequently adjourned for a participatory hearing. The Landlord is seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 A.M. on April 25, 2022 as a teleconference hearing. The Landlord’s Agent J.C. appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agent and I were the only persons who had called into this teleconference.

The Landlord’s Agent testified the Notice of Adjourned Hearing and documentary evidence package was served to the Tenant in person on February 8, 2022. The Landlord provided a witnessed proof of service in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Notice of Hearing and documentary evidence on February 8, 2022. The Tenant did not submit documentary evidence in response to the Application.

The Landlord’s Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on April 1, 2021. Rent in the amount of \$1,895.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$925.00 and a pet damage deposit in the amount of \$400.00, both of which the Landlord continues to hold. The Landlord's Agent stated that the Tenant continues to occupy the rental unit.

The Landlord's Agent testified the Tenant did not pay rent in the amount of \$1,895.00 when due on December 1, 2022. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 6, 2021 (the "10 Day Notice") with an effective vacancy date of December 16, 2021. The Landlord stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on December 6, 2021. The Landlord provided a witnessed proof of service in support.

The Landlord's Agent stated that the Tenant also failed to pay January 2022 rent. The Landlord stated that the Tenant paid \$1,895.00 on January 18, 2022, failed to pay rent on March 1, 2022 before paying the outstanding balance of rent owing on March 18, 2022. The Landlord's Agent stated that the Tenant has not paid rent for April 2022 in the amount of \$1,895.00 which is still owing. The Landlord is seeking a monetary order in the amount of \$1,895.00 for unpaid rent for April 2022. The Landlord is also seeking an order of possession based on the unpaid rent.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the *Act* states 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.

I find based on the Landlord's Agent's uncontested testimony that the Landlord served the 10 Day Notice dated December 6, 2021 with an effective vacancy date of December 16, 2021, to the Tenant in person on December 6, 2021. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received on the same date. I find the Tenant is deemed to have received the 10 Day Notice on December 6, 2021.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until December 11, 2021 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's Agent's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the balance of rent owing within 5 days. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, December 16, 2021, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,895.00 for April 2022 rent. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security and pet damage deposits held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$670.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,895.00
Filing fee:	\$100.00
<u>LESS security/pet deposit:</u>	<u>-\$1,325.00</u>

TOTAL:	\$670.00
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Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$670.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 25, 2022

Residential Tenancy Branch