



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on February 8, 2022 seeking an order of possession for the rental unit, 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 May 12, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter – Notice of hearing to Tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document was served in a method allowed under s. 89(2) of the *Act*, and I must accept that evidence.

The Landlord provided testimony and evidence that they used registered mail for this purpose. They included a registered mail receipt in the evidence to show they sent this on February 15, 2022. They confirmed the Tenant still lives in the rental unit, and that the package containing the notice of this hearing, and the Landlord’s evidence, was delivered. They also provided an image of the package returned to them because the Tenant did not retrieve the registered mail as required.

Based on the submissions of the Landlord, I accept they served the Tenant notice of this hearing and their Application in a manner complying with s. 89(2)(b) of the *Act*, and the hearing proceeded in the tenant's absence.

Issue(s) 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 recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord who attended the hearing stated there was no written tenancy agreement. There was no security deposit paid at the start of the tenancy. In an earlier hearing the Landlord referred to, that Arbitrator recorded that the Tenant presented the hearing began in 2017. The Landlord here presented that the Tenant paid \$3,900 per month for rent, payable on the 4th day of each month. The Tenant in the prior hearing confirmed that amount to the Arbitrator as recorded in that decision. To verify the amount of monthly rent, for this hearing the Landlord presented copies of rent cheques from the Tenant to the Landlord showing that rent amount.

The Landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). They presented that they served this to the tenant on January 21, 2022 for the monthly rent amount not paid on January 4, 2022. In their Proof of Service as it appears in the evidence is the Landlord's presentation that they sent a copy via registered mail to the Tenant at the rental unit address. They also provided tracking information for that piece of mail, sent on January 21, 2022.

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, February 5, 2022.

The Landlord also presented that the Tenant had not paid rent since May 2021. Coming after the issuance of the 10-Day Notice, the Landlord presented that the Tenant did not pay rent for the subsequent months in 2022: February, March, April, and May.

Analysis

From the testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of rental payment and amount. The Tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by January 31, 2022, within the five days after the deemed service date of January 26, 2022. The Tenant did not dispute the 10-Day Notice within that five-day period.

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, February 5, 2022.

The Landlord provided testimony on the account in question and the accumulation of the rent amounts owing. As presented, I find the amount of \$19,500 is accurate. By Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I accept the Landlord's amendment to their Application. The Tenant did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount owing.

The hearing itself was scheduled on May 12, 2022, and the agent of the Landlord stated that the Tenant was still living in the rental unit on that date. The Tenant has been overholding since the effective date of the end of tenancy, February 5, 2022.

I find the Landlord is entitled to an Order of Possession. Additionally, I award compensation for the unpaid rent amount of \$19,500, as per s. 55(4)(b) of the *Act*.

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, the landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Pursuant to s. 55 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$19,600 for rent owed for January through to May 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: May 12, 2022

Residential Tenancy Branch