



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order of possession for unpaid rent 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
- An order of possession pursuant to 2 Month Notice to End Tenancy for Landlord’s Use, pursuant to sections 49 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and ended at 9:50 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing, accompanied by her daughter/agent, SP (“landlord”). The landlord’s agent was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she served the tenant with the Notice of Dispute Resolution Hearing package by registered mail to the tenant’s residential address on February 24, 2022. She also served the tenant with the amendments by registered mail on April 13, 2022. The tracking numbers for the mailings are recorded on the cover page of this decision. The documents are deemed served upon the tenant five days after the mailings in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to 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 February 1, 2019 with rent set at \$2,500.00 per month payable on the first day of the month. It was raised to \$2,650.00 per month but the landlord acknowledges that she never served the tenant with a formal notice to increase the rent. It was done via text message instead. The text was not provided as evidence for this hearing. A security deposit of \$1,250.00 was collected from the tenant which the landlord continues to hold.

The tenant did not pay rent for the month of February on February 1st. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on February 2, 2022 by posting a copy to the tenant's front door. A signed proof of service document was provided as evidence, as was a copy of the notice to end tenancy. The landlord testified that the tenant made a rent payment via e-transfer on March 6th. The landlord applied this payment to the outstanding February arrears and the tenant has not paid rent for the months of March, April or May, 2022. The landlord has served the tenant with 10 Day Notices to End Tenancy for Unpaid Rent for each of those months, as well.

Analysis

The tenant did not attend the hearing to dispute any of the landlord's testimony or evidence. Based on the undisputed evidence of the landlord, I make the following findings.

I find the tenant was served with an effective 10 Day Notice to End Tenancy for Unpaid Rent on February 7, 2022, five days after February 2nd, the day it was posted to the tenant's door in accordance with sections 88 and 90 of the Act.

Sections 46(4) and (5) of the Act state:

- (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.

The tenant failed to pay the full rent identified as owing within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 17, 2022, the earliest effective date in accordance with section 53 of the *Act*. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective 2 days after service.

I find the landlord did not raise the tenant's rent in accordance with the provisions of Part 3 of the *Act*. Accordingly, I find the tenant was obligated to pay rent in the amount of \$2,500.00 per month and failed to do so for the months of March, April and May 2022. The landlord is therefore entitled to a monetary order for the 3 months, totalling \$7,500.00 in accordance with sections 26 and 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The landlord continues to hold the tenant's security deposit in the amount of \$1,250.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.

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 award the landlord a monetary order in the amount of \$6,350.00.

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: May 24, 2022

Residential Tenancy Branch