



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR MNRL MNDCL FFL

Introduction

This matter originally proceeded by way of a Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession for unpaid rent or utilities and to recover the filing fee. On March 11, 2022, an adjudicator adjourned this matter to a participatory hearing which was held on this date, Tuesday, June 21, 2022 at 11:00 a.m. Pacific Time.

An agent for the landlord, AG (agent) attended the teleconference as scheduled and provided affirmed testimony. The agent also presented their documentary evidence. I have described the evidence relevant to the matters before me below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of Hearing, application, documentary evidence were considered. The agent provided affirmed testimony that the Notice of Adjourned Hearing, Interim Decision, amended application and additional documentary evidence were served on the tenant and that the tenant continues to occupy the rental unit and has since failed to pay the full amount owing for June 2022 rent, hydro utilities and a late rent payment fee. A registered mail receipt was submitted in evidence during the hearing and according to the Canada Post registered mail tracking website was successfully delivered to the tenant. The registered mail tracking number has been included on the cover page of this decision for ease of reference and marked as "1". Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. According to the online registered mail tracking information the registered mail package was mailed on March 17, 2022 and was signed for and accepted on March 23, 2022. I find the tenant was duly served on March 23, 2022.

In addition, the agent testified that the original Direct Request application and documentary evidence were also served by registered mail and was mailed on February 16, 2022 and was signed for and accepted by the tenant on February 24, 2022. Given the above, I find the tenant was duly served and pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rules 7.3 and 7.4 I find this matter to be unopposed by the tenant. As a result, the hearing proceeded without the tenant present.

Preliminary and Procedural Matters

The agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant does not have an email address the decision will be sent by regular mail to the tenant, who continues to occupy the rental unit.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 10 Day Notice?
- Is the landlord entitled to a monetary order under the Act and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on November 1, 2011. The agent confirmed that the two original tenants passed away and that their adult family member has been paying the rent for the past couple of years. Originally, the monthly rent was \$730.00 and has been increased during the tenancy to the current monthly rent amount of \$861.43 and has always been due on the first day of each month. The original tenants paid a security deposit of \$365.00 that the agent stated they do not want to offset from their claim.

The agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2021 (10 Day Notice) was posted to the tenant's door on December 2, 2021. Section 90 of the Act states that documents posted to the door are deemed served 3 days after they are posted.

The 10 Day Notice indicates that \$773.70 was owed as of December 1, 2021 as there was a partial credit for November 2021 overpaid rent. The agent also stated that there was a \$25.00 late fee applied. The effective vacancy date was listed as December 15, 2021. The agent stated that the tenant did not pay the amount owing within 5 days of being served the 10 Day Notice and waited until December 12, 2021 and as of the date of the hearing, still owes \$337.86 for June 2022 rent owing plus a \$25.00 late fee, plus unpaid hydro of \$64.84 as electricity is not included in the monthly rent.

The agent stated that landlord is seeking a 2-day order of possession and a monetary order including the filing fee.

Analysis

Based on the landlord's undisputed documentary evidence and undisputed testimony provided by the agent, and on the balance of probabilities, I find the following.

Order of Possession - I accept the agent's undisputed testimony that the tenant failed to pay their portion of rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice, December 15, 2021. The 10 Day Notice was posted to the door on December 2, 2021. Pursuant to section 90 of the Act, documents served by posting to the tenant's door are deemed received 3 days later which makes the deemed service date of the 10 Day Notice December 5, 2021. I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on December 15, 2021 and that the tenant has been overholding the rental unit since that date.

Unpaid rent, unpaid hydro and late fee – I accept the undisputed testimony that the tenant failed to pay \$337.86 of June 2022 rent, plus a late fee of \$25.00 and \$64.84 in unpaid utilities. Therefore, I find the tenant breached section 26 of the Act which states that rent is due on the date that is due in the tenancy agreement, which is the first day of each month. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$337.86** for the unpaid portion of June 2022 rent, **\$25.00** for the June 2022 late fee, plus **\$64.84** for unpaid utilities.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the total amount of **\$527.70** comprised of \$337.86 in unpaid rent, \$25.00 late fee, \$64.84 unpaid utilities, and the \$100.00 filing fee.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order of \$527.70 which must be served on the tenant. Once served with a demand for payment letter, the landlord may enforce this order in the Provincial Court, Small Claims Division.

The decision and both orders will be emailed to the landlord. The tenant will have the decision sent to them by regular mail as the landlord is not aware of an email address for the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 21, 2022

Residential Tenancy Branch