



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [Tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on February 24, 2022 seeking an order of possession of the rental unit. Additionally, they applied for recovery of unpaid rent, and the cost of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 6, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Tenant here received the Landlord’s notice of this hearing and the Landlord provided proof of that in the form of the mailing record that was sent on March 5, 2022 via registered mail. The Tenant confirmed receipt of that, and confirmed they attended the hearing to speak to the matter.

Issues 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 recovery of unpaid rent amounts, pursuant to s. 67 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 provided a copy of the tenancy agreement in their evidence. This is a standard 13-page document drafted by their organization. This bears the signature of the Landlord and the Tenant here, dated September 27, 2017. The agreement provides for the monthly rent amount of \$1,100, and a security deposit amount of \$550. In the hearing the Landlord provided that the updated rent amount was \$1,173 per month as of February 1, 2022.

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 served this to the Tenant on February 8, 2022, by attaching a copy to the door of the rental unit on that date.

The Landlord provided a copy of the 10-Day Notice. It provides 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 18, 2022.

The reason for the Landlord serving the 10-Day Notice, as provided on page 2 of the document, is the unpaid rent due on February 1, 2022. This amount was \$564.

In the hearing, the Tenant confirmed they did not apply to challenge the 10-Day Notice within the allotted dispute resolution timeframe set out on that document. They set out that on March 15 they provided 2 money orders to the Landlord to cover the rent amounts owing: this was \$750 on their own money order, and \$649 on a money order that was given to them by a family member. After this, they paid the following month of April 2022, and May. As at the time of the hearing on June 7, they had not yet paid June 2022 rent.

The Landlord reviewed the ledger sheet that they provided, updated as it appears in their evidence. They noted partial payments of \$750 on March 15; \$1,516 on March 25, and \$1,180 on May 9. The Tenant countered this by saying they provided the additional payment of \$649 in March. The Landlord presented that, as of June 1, 2022, the Tenant's outstanding balance for rent owing was \$1,810.

Analysis

The *Act* s. 46(4) states that within 5 days of receiving a Notice a Tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

Following this, s. 46(5) says that 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 is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

At the hearing, the Tenants confirmed they did not apply for dispute resolution to challenge the validity of the 10-Day Notice. The evidence shows they did not pay the rent within the five-day time period.

The Landlord issued and served the 10-Day Notice to the Tenant on February 8, 2022. I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by February 16, 2022, within the five days granted under s. 46(4) of the *Act*, and accounting for three days' deemed service as per s. 90(c). Additionally, 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 18, 2022.

On my review of the document, the 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52. By s. 55(1), I grant an Order of Possession to the Landlord.

By s. 67 I grant the Landlord an order for payment of the unpaid rent as provided for on their current ledger sheet. This is \$1,810. The Tenant alluded to their family member having proof of an additional \$649 monetary order; however, they did not produce that record for this hearing. The Landlord has provided ample evidence to show unpaid rent payments for the rental unit beyond February 2022.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the Landlord. I grant an award of \$1,810 to the Landlord. After setting

off the security deposit, there is a balance of \$1,260. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$1,260 as compensation for the outstanding 2022 rent amounts owing.

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, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 67 and s 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,360 for recovery of rent, and 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: June 8, 2022

Residential Tenancy Branch