



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on March 8, 2022 seeking an order of possession for the rental unit, unpaid rents amounts owing, 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 June 27, 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 March 17, 2022. This was the same day they received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. They confirmed the Tenant still lives in the rental unit, and that the package containing the notice of this hearing, was delivered.

The Landlord was not able to provide the documentary evidence they provided to the Residential Tenancy Branch to the Tenant. Because it has not been disclosed, I do not consider these pieces of evidence, in the interest of procedural fairness.

Based on the submissions of the Landlord, I accept they served the Tenant notice of this hearing 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 compensation for rent amounts owing, 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 who attended the hearing stated there was no written tenancy agreement. Another Tenant lived in the unit starting in 2014, and approximately two years the Tenant Respondent in this matter moved in to the rental unit. Since that other party departed, the Tenant was living in the rental unit alone.

The Landlord here presented that the rent amount is \$683. They are holding the original security deposit of \$300 from the start of the tenancy from 2014.

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 February 10, 2022, for an amount of rent not paid by February 1, 2022. They stated the Tenant was aware of the Notice, having retrieved it from their rental unit door where it was attached. In a subsequent visit involving the police, the police officer also mentioned the 10-Day Notice to the Tenant.

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 20, 2022.

The Landlord presented that the Tenant paid the following for rent in the months leading up to the 10-Day Notice:

- Tenant owed \$3 from November 2021
- Tenant paid \$500 in December 2021, owing \$183
- Tenant paid \$550 in January 2022, owing \$133

- Tenant paid nothing in February 2022.

The Landlord presented that the Tenant did not pay the \$1,002 amount that is the combination of amounts owing, as it appears on the 10-Day Notice.

In the months after the 10-Day Notice, the Tenant paid the following:

- \$450 in February 2022, after the 10-Day Notice
- \$450 in March 2022
- Nothing for each of April, May, and June 2022.

The Landlord provided that the current amount of rent owing from the Tenant is \$,834 in total.

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 February 18, 2022, within the five days after the deemed service date of February 13, 2022. The Tenant did not dispute the 10-Day Notice within that five-day period.

I find the Tenant received the 10-Day Notice as served by the Landlord. I consider the document in the evidence for this hearing for this reason. 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 20, 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 \$2,834 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 June 27, 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 20, 2022.

I find the Landlord is entitled to an Order of Possession. Additionally, I award compensation for the unpaid rent amount of \$2,834, as per s. 55(4)(b) of the *Act*.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$2,834. After setting off the security deposit, there is a balance of \$2,534. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$2,534 as compensation for the 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, 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 \$2,634 for rent owed for November 2021 through to June 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: June 27, 2022

Residential Tenancy Branch