



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on February 9, 2022 (the “10-Day Notice”);
- A monetary order, which is claimed against the security deposit, pursuant to s. 67 for unpaid rent; and
- Return of its filing fee pursuant to s. 72.

L.M. appeared as agent for the Landlord. The Tenants did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord’s agent confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent testified that the 10-Day Notice was served on the Tenants via ordinary mail sent to the rental unit on February 9, 2022. Based on the undisputed testimony of the Landlord’s agent, I find that the 10-Day Notice was served in accordance with s. 88(c) of the *Act*, which permits service via ordinary mail. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the 10-Day Notice on February 14, 2022.

The Landlord's agent advised that the Notice of Dispute Resolution and evidence was served on the Tenants via registered mail sent on April 20, 2022. Tracking receipts for the registered mail packages were put into evidence by the Landlord. I find that the Notice of Dispute Resolution and the Landlord's initial evidence was served on the Tenant via registered mail sent on April 20, 2022. Pursuant to s. 90 of the *Act*, I deem that these materials were received by the Tenants on April 25, 2022.

Preliminary Issue – Service of the Landlord's Evidence

The Landlord's evidence includes rent ledgers that are dated June 14, 2022 and July 19, 2022. The Landlord's agent acknowledges that the rent ledger of July 19, 2022 was not served on the Tenants at all. Submissions were made with respect to the accuracy of the rent ledger from June 14, 2022 by the Landlord's agent at the hearing.

Rule 3.5 of the Rules of Procedure requires applicants to be prepared to demonstrate served of their application material at the hearing. Rule 3.14 of the Rules of Procedure requires that an applicant's evidence be served and received by the respondent at least 14-days before the hearing.

Presently, the Landlord's agent testified to service of application materials via registered mail on April 20, 2022. However, the ledgers mentioned were clearly created after April 20, 2022.

I find that the ledgers of June 14 and July 19 were not properly served by the Landlord. As they were not served, they are not included in the record, nor will they be considered by me.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent confirms the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on April 29, 2017.
- Rent of \$2,205.59 is payable on the first day of each month.
- The Landlord holds a security deposit of \$1,025.00 in trust for the Tenants.

A copy of the tenancy agreement was put into evidence by the Landlord.

The Landlord provides a copy of the 10-Day Notice, which lists that it was issued on the basis that the Tenant had failed to pay rent of \$4,411.18 on January 1, 2022. The Landlord provides a copy of a rent ledger generated on March 28, 2022 in support of its application.

The Landlord's agent made submissions with respect to rent payments made and amounts due. These did not correspond with the rent ledger put into evidence. When asked about this, the Landlord's agent indicates she made an error and that the rent ledger is accurate. The rent ledger generated on March 28, 2022 shows that when the 10-Day Notice was issued, rent of \$2,257.18 was due and payable. When asked why the 10-Day Notice lists \$4,411.18, the Landlord's agent says that is in error and says that the 10-Day Notice is automatically generated.

The rent ledger indicates that the Tenants made no payment on rent due until March 2, 2022, where they made a payment of \$2,255.00.

The Landlord's agent made further submissions on payments made after that date and says that \$1,010.13 is left owing by the Tenants. The Landlord's agent suggested I review the late evidence to clarify the Landlord's position, this despite my indicating at the outset of the hearing that it had been excluded.

The Landlord's agent says that the Tenants still live within the rental unit and says they have received no application from the Tenants disputing the 10-Day Notice.

Analysis

The Landlord seeks an order of possession and an order for unpaid rent.

I pause to consider the quality of the Landlord's evidence. The agent testified to amounts that clearly did not correspond with their documentary evidence, only to assert that the ledger was accurate rather than submissions she had made. I was asked to review evidence provided to the Residential Tenancy Branch which the agent admits was not served on the Tenants. The 10-Day Notice in issue has listed an amount owing of \$4,411.18, which does not correspond with the rent ledger provided nor the submissions made by the Landlord's agent. The agent tells me that the 10-Day Notice was automatically generated. However, that does not explain why the 10-Day Notice was not reviewed by the Landlord before it was served on the Tenant.

I would characterize the Landlord as a sophisticated Landlord. They are a large corporation managing many properties. I would expect the Landlord to conduct itself as a business, which would mean it organize its evidence, serve it in compliance with the *Act* and Rules of Procedure, and be prepared at the hearing. That did not occur here. I caution the Landlord to ensure its evidence is organized, served, and that they are properly prepared for subsequent hearings.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Though the Landlord was inconsistent in its evidence in the amount of rent owed, it was consistent that the Tenants were in arrears when the 10-Day Notice was issued. Given this, I find that the Tenant was in arrears of rent when the 10-Day Notice was served.

When a 10-day notice to end tenancy issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. This is made clear at the very top of the 10-day notice to end tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Despite the Landlord's inconsistent evidence, I am satisfied that in these circumstances the Tenants neither paid the arrears or filed to dispute the notice. The Landlord's agent and the ledger are consistent that the Tenant failed to pay rent within 5-days of receiving the 10-Day Notice. The ledger indicates that the first payment received following service of the 10-Day Notice was on March 2, 2022. The Landlord's agent confirmed that the Tenant did not file an application disputing the 10-Day Notice.

Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is February 28, 2022, as stated in the 10-Day Notice.

As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession.

With respect to the claim for unpaid rent, due to the conflicting and inconsistent evidence from the Landlord, I find that I am unable to determine what amount of rent is owed. The four-part test under s. 67 of the *Act* requires an applicant to quantify their claim. In this case, the Landlord has not done so. I dismiss the Landlord's claim for unpaid rent with leave to reapply.

Conclusion

The Tenants are conclusively presumed to have accepted the end of the tenancy. I grant the Landlord an order of possession pursuant to s. 55 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord's claim for unpaid rent is dismissed with leave to reapply.

The Landlord was partially successful in its application. Given the mixed success and in light of the caution I provided above, I find that the Landlord is not entitled to the return of its filing fee. Its claim for the return of its filing fee pursuant to s. 72 of the *Act* is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of possession on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 22, 2022

Residential Tenancy Branch