



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on July 6, 2022 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 11:15 a.m. to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, present evidence and make submissions.

The landlord testified that on July 11, 2022, a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision was sent to the tenants by registered mail. The landlord provided a registered mail receipt with tracking number in support of service.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord asked to amend his claim to include outstanding rent for the months of June, July and August 2022. However, the landlord testified that the tenants have not been seen for months and that it appears the unit could be sitting empty. The landlord testified he has not checked to see if the unit was abandoned. The landlord is required to mitigate losses and checking to see if a unit is abandoned so it can be re-rented would be prudent. As it is possible the tenants have abandoned the unit, I do not allow the landlord's request for an amendment. If it turns out the tenants are still occupying the unit, the landlord is at liberty to reapply for additional losses.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The tenancy began on November 1, 2013, and the current monthly rent is \$1056.00 payable on the 1st day of each month. The tenant paid a security deposit of \$436.50 at the start of the tenancy which the landlord continues to hold. The landlord confirmed the unit# for the rental is correct as it appears on this application.

The landlord submitted a copy of a 10 Day Notice dated April 12, 2022. The 10 Day Notice indicates an outstanding rent amount of \$1081.00 which was due on April 1, 2022. The landlord testified that this included a \$25.00 NSF fee which has since been waived by the landlord. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on April 12, 2022, the 10 Day Notice was served to the tenants by posting a copy to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid by the tenants since.

The landlord's monetary claim is for outstanding rent in the amount of \$2,112.00 which includes unpaid rent for April and May 2022.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted an end to the tenancy.

I am satisfied that the tenants were deemed served with the 10 Day Notice on April 15, 2022, three days after its posting, pursuant to sections 88 & 90 of the Act. The tenants would have had until April 20, 2022 to pay the outstanding amount as per the 10 Day Notice which they failed to do.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$2,112.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2,212.00.

The landlord continues to hold a security deposit of \$436.50. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1,775.50.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of \$1,775.50. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 11, 2022

Residential Tenancy Branch