



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPR, MNRL, MNDCL, MNDL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on April 7, 2022, and amended on July 21, 2022 seeking:

- an Order of Possession for the rental unit pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”);
- an Order of Possession for the rental unit pursuant to the Two-Month Notice to End Tenancy for Landlord’s Use (the “Two-Month Notice”);
- compensation for monetary loss or other money owed;
- recovery of unpaid rent amounts;
- compensation for damage caused by the Tenant to the rental unit;
- reimbursement 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 August 31, 2021. 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 the 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.

In the hearing, the Landlord provided testimony and evidence that they provided the Notice of Dispute Resolution Proceeding to the Tenant by attaching it to the door of the rental unit and serving it via email. The Landlord's amendment to the Application of July 26, 2022 was served in a similar manner.

The Landlord provided evidence in the form of a Canada Post tracking record, with the descriptive element of that piece of element providing that this was service of the "proceeding package." This shows the mail sent on April 22 and delivered on April 26.

The Landlord described telling the Tenant directly that this hearing would be taking place. After this, the Tenant blocked the Landlord's contact information on their phone, meaning the Landlord could not contact the Tenant directly.

Based on the submissions of the Landlord, I accept they served the Tenant notice of this hearing and their Application in a manner complying with s. 89(2) 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 monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to other monetary compensation 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 spoke to the terms of the tenancy agreement, a copy of which appeared in their evidence. The tenancy began on October 1, 2021, with the rent amount of \$1,400 payable on the first of each month. The agreement shows the Tenant paid a security deposit of \$500.

The Landlord presented that they served the 10-Day Notice to the tenant on June 13, 2022. They attached this document to the door of the rental unit on June 13, as indicated in the 10-Day Notice and shown in the photo showing the attached document to the door on that date.

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, June 26, 2022.

The reason for the landlord serving the 10 Day Notice is accumulated unpaid rent, this was for \$1,400 due on June 1, 2022.

The Landlord also applied for monetary compensation of unpaid rent amounts. This accumulated since the Landlord's initial Application, and they provided that the Tenant did not pay for each of June, July, and August 2022. This is \$1,400 for each month. Additionally, there was an extant balance of \$260 carried over from February 2022. In total, this amount is \$4,460.

The Landlord amended their Application to add for damage in the rental unit. This is \$100 for each of 4 window screens, a door for \$400, and a bathroom cabinet door for \$150. This is shown in photos they provided in their evidence. As the Landlord stated in the hearing, this was for damage they noticed within the rental unit. The Landlord provided these amounts and their description in their Application amendment of June 21, 2022.

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 June 21, 2022, within the five days (as per s. 46(4) of the *Act*) after the deemed service date of June 16, 2022. The Tenant also 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, June 26, 2022.

The Landlord provided testimony and evidence on the account in question and the accumulation of the amount. As presented, I find the amount of \$4,460 for rent owing is accurate. By Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I accept the Landlord's amendment to their Application, with no evidence to the contrary.

The hearing itself was scheduled on August 9, 2022, and the agent of the Landlord stated that the tenant was still living in the rental unit on that date. The Tenant has thus been overholding since the effective date of the end of tenancy, June 26, 2022. The damage in the rental, as of the date of the hearing, was not finalized and the Landlord did not provide invoices for purchases or repairs for that work. At this stage, I deem the Landlord's Application for these amounts premature; therefore, I dismiss this portion of the Landlord's Application, yet they have leave to reapply.

I find the Landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$4,460.

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 \$4,460. After setting off the security deposit, there is a balance of \$3,960. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$3,960 as compensation for the rent amounts owing.

As the Landlord was successful in this application, I find they are entitled to recover the \$100 filing fee paid for this Application.

The tenancy is ending on the basis of the 10-Day Notice for unpaid rent; therefore, I dismiss the other portions of the Landlord's Application dealing with the Two-Month Notice.

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, 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. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,560 for rent owed, and a recovery of the filing fee for this hearing Application. I provide the Landlord with this Order in the above terms, and they must serve it to the Tenant 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: August 9, 2022

Residential Tenancy Branch