



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 5, 2022 ("10 Day Notice"), for a monetary order for \$2,550.20 for unpaid rent, unpaid parking fees, late fees, for an unpaid pet damage deposit, and to recover the cost of the filing fee.

An agent for the landlord, WM ("agent") and a property administrator for the landlord, AW ("administrator") attended the participatory hearing and were affirmed. During the hearing the agent and administrator were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated June 2, 2022 ("Notice of Hearing"), application and documentary evidence ("Package") were considered. The agent testified that the Package was served on the tenant by registered mail and that the tenant continues to occupy the rental unit as of the date of the hearing. The registered mail tracking number was submitted in evidence and has been included on the cover page of this Decision for ease of reference. According to the online Canada Post registered mail tracking website, the package was mailed to the tenant on June 4, 2022 and was returned to the sender and marked as "unclaimed". Pursuant to section 90 of the Act, which deems documents are served 5 days after they are sent via registered mail, I find the tenant was duly served with the Package on June 9, 2022.

Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing. I find this matter to be unopposed by the tenant as a result of the above.

Preliminary and Procedural Matters

The agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The tenant will be sent the Decision by regular mail as there was no email address provided for the tenant.

In addition to the above, the agent and administrator were advised that I would be dismissing the landlord's request for the pet damage deposit, as the tenancy has ended based on the undisputed 10 Day Notice before me. As a result, I will not be granting the pet damage deposit that the landlord indicates was not paid by the tenant. The landlord is reminded that failure to pay a pet damage deposit is a reason for issuing a 1 Month Notice to End Tenancy for Cause in the future, if required.

The agent and administrator provided a lower, updated amount owing by the tenant since filing their application as follows:

1. Unpaid rent owing as of date of hearing = \$1,148.20
2. Unpaid parking fees at \$40 per month = \$520
3. Late fees x 6 at \$25 per late fee = 150
4. Filing fee = \$100

TOTAL CLAIM = \$1,918.20

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 7, 2021 and is scheduled to convert to a month-to-month tenancy after September 30, 2022. Monthly rent in the amount \$984 is due on first day of each month. The tenant paid a security deposit of \$477, which the landlord continues to hold. The agent confirmed that the tenant continues to occupy the rental unit and that the tenant failed to pay a pet damage deposit.

The agent testified that the 10 Day Notice was served by posting to the tenant's door on April 5, 2022 and was witnessed by RH. The 10 Day Notice indicates that \$1,148.20 was owed in rent as of April 1, 2022. The administrator testified that the amount of \$1,148.20 was rent only and did not include unpaid parking and late fees.

The agents stated that while rent has been paid since being served with the 10 Day Notice, it was not served on time for September 2022 and that rent arrears were not paid since being served with the 10 Day Notice and that the tenant did not dispute the 10 Day Notice.

The landlord is seeking an order of possession and a monetary order of \$1,918.20.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agent and administrator during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. Pursuant to section 90 of the Act, I find the tenant was deemed served with the 10 Day Notice 3 days after it was posted to the tenant's door, which would be April 8, 2022. The effective vacancy date of the Notice is listed as April 15, 2022, which automatically corrects to April 18, 2022 pursuant to section 53 of the Act. As April 18, 2022 has passed, I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which has been corrected to April 18, 2022. The tenant continues to occupy the rental unit. Therefore, I **grant** the landlord an order of possession effective **September 30, 2022 at 1:00 p.m.**

I find the tenancy ended on April 18, 2022 and that the tenant has overheld the rental unit since that date.

Claim for unpaid rent, loss of rent, unpaid parking fees and late fees – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the undisputed testimony of the agent and administrator that the tenant owes a total amount of \$1,818.20, comprised of \$1,148.20 in unpaid rent and loss of rent, \$520 in unpaid parking fees, and \$150 in late fees.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a total monetary claim of **\$1,818.20**.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

The landlord is not seeking to offset the amount owed with the security deposit. Therefore, I grant the landlord a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of **\$1,918.20**

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective September 30, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on April 18, 2022.

The landlord has established a total monetary claim of \$1,918.20 and has been granted a monetary order in that amount. The monetary order must be served on the tenant and

may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenant that they can be held liable for all costs related to the enforcement of both orders.

The Decision and orders will be emailed to the landlord for service on the tenant.

The Decision will be sent by regular mail to the tenant as an email address was not provided for the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 27, 2022

Residential Tenancy Branch