



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes OPR MNRL MNDL FFL

Introduction

The landlords seek an order of possession and a monetary order for unpaid rent, based on an undisputed *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) pursuant to sections 55(2)(b) and 55(4)(b) of the *Residential Tenancy Act* (the “Act”). The landlords also seek compensation for damage caused to the rental unit, and recovery of the application filing fees under section 72 of the Act.

It should be noted that the landlords filed an application for dispute resolution on May 19, 2022, in respect of an order of possession. However, they did not serve the Notice of Dispute Resolution Proceeding on the tenant within 3 days as required. As such, the landlords made a further application for dispute resolution on June 9, 2022.

A dispute resolution hearing was held on Monday, September 26, 2022 at 11:00 AM. One of the two landlords called into the hearing at 11:02 AM and the hearing ended at 11:15 AM. The landlords provided a witness statement, and confirmed during the hearing, that the tenant was served in person with the Notice of Dispute Resolution Proceeding (for this hearing) on June 22, 2022. (Incorrectly stated as 2023.)

Based on this undisputed oral and documentary evidence it is my finding that the tenant was served in compliance with the Act and had ample opportunity to participate in the dispute resolution process.

Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to a monetary order?
3. Are the landlords entitled to recover the application filing fee?

Background and Evidence

The tenant rents a basement suite and rent is \$750.00. Rent is due on the first day of the month. There is no security or pet damage deposit, nor is there a written tenancy agreement.

On May 15, 2022 the landlords served the Notice on the tenant in person. The tenant owed \$750.00 in rent that was due on May 1. The tenant does not appear to have ever paid the rent arrears or disputed the Notice. A copy of the Notice was in evidence.

The landlord testified that as of September 1 the tenant owes rent for May, June, July, August, and September, for a total of \$3,750.00.

The landlords also sought an additional \$2,000.00 in compensation for, as written in the landlord's application:

[Tenant] took out all the windows and took them, along with this wall and paint damage. Landscape damage caused by heavy machinery being stored in the front and backyard. Along with this broken cars being stored on the front yard. We gave [tenant] a 30 day clean up notice when he did not [comply] with as nothing was cleaned.

The landlord testified that the tenant had broken all the windows and that he had to clean up the tenant's garbage which cost him between \$700-\$800. No receipts or invoices for the amount claimed (either the larger or lesser amounts) were submitted into evidence, nor were any photographs of the state of the property.

Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The oral tenancy agreement for this tenancy requires that the tenants pay rent on the first day of the month.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

A landlord may apply for an order of possession under section 55(2)(b) of the Act if a tenant does not dispute a notice to end tenancy within the required time period.

In this case, the tenant did not dispute the Notice within 5 days as required under section 46(4) of the Act. As such, pursuant to section 55 of the Act the landlords are entitled to an order of possession. A copy of the order of possession is issued to the landlord along with this decision. **The landlords must serve a copy of the order of possession upon the tenant.** Should the tenant refuse to comply with the order of possession then the landlords may enforce the order of possession in the Supreme Court of British Columbia.

Pursuant to section 55(4)(b) of the Act the landlord is also entitled to an order requiring that the tenant pay \$3,750.00 in rent to the landlord.

Regarding the landlords' claim for additional compensation, the amount claimed in the application (\$2,000.00) does not equal the amount claimed during the hearing (\$700-\$800). Nor is there any detailed calculation or written explanation as to how either amount was determined. Last, in the absence of any additional evidence such as photographs, invoices, or so forth, I am simply not persuaded that the landlords have established a claim for either amount. As such, this aspect of the landlords' claim is dismissed with leave to reapply. In other words, after the tenant has vacated the rental unit, the landlords are at liberty to file another application for dispute resolution seeking compensation. However, any such application must include supporting documentary evidence.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee.

The landlords did not comply with the three-day service requirement for their first application, and as such they are not entitled to recover the cost of the application filing fee for that application. However, they are entitled to recover the \$100.00 filing fee for the second application. This amount shall be added to the monetary order for a total of \$3,850.00. A copy of the monetary order is issued with this decision to the landlords.

The landlords must serve a copy of the monetary order upon the tenant. If the tenant fails or refuses to pay this amount the landlords may enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

For the reasons given above, the landlords' (second) application is hereby GRANTED, in part. The landlords are granted an order of possession of the rental unit. The landlords are also granted a monetary order in the amount of \$3,850.00.

The landlords' first application shall be recorded as being dismissed with leave.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: September 26, 2022

Residential Tenancy Branch