



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- an order of possession based on a mutual agreement to end tenancy pursuant to section 55;
- 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.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on September 2, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail receipt and tracking number in support of service.

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

Issues

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The current lease began on August 4, 2021 with a monthly rent of \$1300.00 payable on the 1st day of each month.

The landlord testified that on May 29, 2022 the parties entered into a mutual agreement to end the tenancy effective August 1, 2022. A signed Mutual Agreement to End Tenancy form was provided with the application. The landlord testified that the tenant failed to vacate as per the mutual agreement to end tenancy.

The landlord's amended monetary claim is for outstanding rent in the amount of \$10,660.00. The landlord testified that this includes previous outstanding rent of \$1560.00 from October 2021 and then \$1300.00 per month for the months of February 2022, May 2022, June 2022, July 2022, August 2022, September 2022 and October 2022.

The landlord testified that as an addendum to the mutual agreement to end tenancy, the landlord had agreed to forgive the tenant for five months rent but this was conditional on the tenant vacating by July 31, 2022. As the tenant failed to vacate the rent forgiveness was void.

Analysis

Pursuant to section 44(1)(c) of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Pursuant to section 55(2)(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy has ended.

The tenant and landlord agreed in writing that the tenancy would end on August 1, 2022. The landlord was entitled to possession of the rental unit effective this date.

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 testimony and evidence of unpaid rent and award the landlord \$10,660.00 as claimed for unpaid rent up to and including October 2022.

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 \$10,760.00.

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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,760.00. 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: October 21, 2022

Residential Tenancy Branch