



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This Landlord submitted an Application for Dispute Resolution on August 11, 2022. Although commenced by Direct Request Proceeding pursuant to section 55(4) of the Residential Tenancy Act (the Act), the matter was set down for a participatory hearing on October 13, 2022.

The Landlord seeks an order of possession and a monetary order for unpaid rent, and to recover the filing fee, pursuant to the Act.

The Landlord was represented at the hearing by MW, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, MW testified that the Tenant was served with the Notice of Dispute Resolution Proceeding package by registered mail on August 31, 2022. In the absence of evidence to the contrary, and pursuant to sections 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on September 5, 2022, five days after they were mailed.

The Tenant did not submit documentary evidence in response to the Landlord's application.

MW was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

On behalf of the Landlord, MW confirmed the tenancy began on May 1, 2015. Currently, rent of \$4,050.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,950.00 which the Landlord holds. A copy of the tenancy agreement, signed by the parties on April 17, 2015, was submitted into evidence.

MW testified the Tenant has not paid rent since March 1, 2020. Accordingly, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent dated May 19, 2022 (the 10 Day Notice). The 10 Day Notice indicates that rent of \$101,150.00 was unpaid at that time. MW testified the 10 Day Notice was served on the Tenant by registered mail on May 19, 2022. In support, the Landlord submitted a Canada Post registered mail receipt which confirmed the date and time of purchase and included the tracking number.

MW testified further that the Tenant has not paid any rent since the 10 Day Notice was served on the Tenant. MW testified that the Tenant advised that he intends to move out, but is unsure if the Tenant has done so.

On behalf of the Landlord, MW acknowledged the amount of rent due is above the monetary jurisdiction of the director. During the hearing, MW explicitly abandoned the part of the claim that exceeds \$35,000.00.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms that a tenant must pay rent when 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.

Section 46 of the Act confirms that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy.

In this case, MW testified, and I find, that the 10 Day Notice was served on the Tenant by registered mail on May 19, 2022. On examination, I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received five days later. Therefore, I find the 10 Day Notice is deemed to have been received by the Tenant on May 24, 2022. Accordingly, pursuant to section 46(4) of the Act, the Tenant had five days – until May 29, 2022 – to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. However, there was no evidence the Tenant disputed the 10 Day Notice in accordance with section 46(4) of the Act, and the affirmed testimony of MW confirms the Landlord has received no further payments since the 10 Day Notice was served on the Tenant. As a result, pursuant to section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In addition, I find the Landlord is entitled to a monetary award for unpaid rent. However, the Landlord's claim exceeds the monetary jurisdiction of the director. Rule of Procedure 2.8 states: "An applicant who has a claim amounting to more than \$35,000.00 may abandon the part of the claim that exceeds \$35,000 so that the balance of the claim may be heard by the arbitrator." During the hearing, MW explicitly abandoned the part of the claim that exceeds \$35,000.00. Therefore, I find the Landlord is entitled to a monetary order of \$35,000.00, which is comprised of \$34,900.00 in unpaid rent and, having been successful, \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$35,000.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 13, 2022

Residential Tenancy Branch