



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1292816 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes TT: **CNR**
 LL: **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant’s Application for Dispute Resolution was made on June 13, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid Rent dated June 7, 2022 (the “10 Day Notice”);

The Landlord’s Application for Dispute Resolution was made on June 29, 2022 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on November 1, 2022 as a teleconference hearing. The Landlord’s Agent attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent testified the Application and documentary evidence package was served to the Tenant by Canada Post Registered Mail on July 17, 2022. The Landlord's Agent provided the tracking information during the hearing, which is reflected on the cover page of this Decision. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence five days later, on July 22, 2022.

As no one attended the hearing for the Tenant, I find the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

The Landlord's Agent 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on September 15, 2021. Rent in the amount of \$2,500.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,750.00, which the Landlord continues to hold. The Landlord's Agent stated that the Tenant indicated to the Landlord via text that they vacated the rental unit at the end of June 2022. The Landlord's Agent stated that there are a number of unauthorized occupants currently occupying the rental unit, therefore, the Landlord is seeking an order of possession to gain vacant possession of the rental unit.

The Landlord's Agent testified the Tenant did not pay rent in the amount of \$1,250.00 for September 2021, and no rent whatsoever for November 2021, January 2022, April 2022, May 2022, and June 2022. Subsequently, the Landlord issued the 10 Day Notice to the Tenant on June 8, 2022 by attaching it to the Tenant's door. The Landlord provided a copy of the 10 Day Notice and proof of service in support. The Landlord's Agent stated that the Tenant has an outstanding balance of unpaid rent in the amount of \$13,750.00. The Landlord's Agent stated that the Tenant has made no payments towards the outstanding balance of rent owed.

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

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states 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 effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlord's uncontested testimony that the Landlord served the 10 Day Notice to the Tenant by posting it to the Tenant's door on June 8, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on June 11, 2022.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until June 16, 2022 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution. I accept that the Tenant had submitted an application to dispute the 10 Day Notice on June 13, 2022, however, since no one attended the hearing for the Tenant, I find the Tenant's Application is dismissed without leave to reapply.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$13,750.00. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me and the Tenant's Application to dispute the 10 Day Notice is dismissed, I find the Tenant is conclusively presumed to have accepted the tenancy ended, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$13,750.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$12,100.00, which has been calculated as follows:

| Claim | Amount |
|-------------------------------|------------------------|
| Unpaid rent: | \$13,750.00 |
| Filing fee: | \$100.00 |
| <i>LESS</i> security deposit: | -(<i>\$1,750.00</i>) |
| TOTAL: | \$12,100.00 |

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and 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 \$12,100.00. The monetary order should be served to the Tenant as soon as possible and 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: November 01, 2022

Residential Tenancy Branch