



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1127354 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPU

Introduction

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

- an Order of Possession for unpaid rent or utilities, pursuant to section 55; and
- a monetary order for unpaid rent or utilities, pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agents attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. 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 agents and I were the only ones who had called into this teleconference for this hearing.

The landlord's agents clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording the dispute resolution hearing by participants, and that the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. The landlord's agents confirmed that they understood.

The landlord's agents testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on October 21, 2022. The landlord provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the Application and evidence on October 26, 2022, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated September 20, 2022, by posting the notice on the tenant's door on September 21, 2022. The landlord provided proof of service, including photos of the 10 Day Notice posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, the 10 Day Notice I find the 10 Day Notice deemed served on September 24, 2022, three days after its posting.

Although the landlord applied for a Monetary Order of \$12,900.00 in their initial claim, the tenant has failed to pay rent for the months of October 2022 and November 2022. Since the filing of this application, another \$3,600.00 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application from \$12,900.00 to \$16,500.00 to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began approximately two years ago, with currently monthly rent set at \$1,800.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$900.00, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice for unpaid rent on September 21 2022. The landlord testified that since the 10 Day Notice was served, the tenant has failed to pay the outstanding rent and utilities, or any rent for the months of October and November 2022. The landlord testified that the tenant now owes \$16,200.00 in outstanding rent in addition to the \$300.00 unpaid utilities.

The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent and utilities.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on October 4, 2022, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 4, 2022. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

The landlord provided undisputed evidence that the tenant failed to pay \$16,200.00 in outstanding rent and \$300.00 in outstanding utilities. Therefore, I find that the landlord is entitled to a monetary order for these amounts.

The landlord continues to hold the tenant's security deposit of \$900.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$15,600.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent and utilities, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent up to November 2022	\$16,200.00
Unpaid utilities	300.00
Security Deposit	-900.00
Total Monetary Order	\$15,600.00

The tenant must be served with this Order as soon as possible. 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: November 15, 2022

Residential Tenancy Branch