



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant; and
- a monetary order for unpaid rent and recovery of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated October 24, 2022, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agent (landlord) attended the teleconference hearing. The tenants did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that each tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on October 28, 2022. The landlord filed the Canada Post receipts showing the tracking numbers as proof of service.

Based on the landlord's testimony and evidence, I find the tenants were sufficiently served under the Act and the hearing proceeded in the tenants' absence.

During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on September 19, 2019, and monthly rent payable by the tenant is \$2,500, due on the 1st day of the month.

The agent submitted that on May 12, 2022, the tenants were served with the Notice, by registered mail, listing a total unpaid rent of \$6,500 as of November 1, 2020. The effective vacancy date listed on the Notice was June 3, 2022. Filed in evidence was a copy of the Notice and proof of service of the Notice.

The agent stated that the tenants have not vacated the rental unit and did not pay the amount listed on the Notice within 5 days, or at all. The amount listed was the unpaid rent accumulated during the moratorium on monthly rent payments, for the time period of January 18, 2020 to August 17, 2020, due to the Covid-19 pandemic and the state of emergency declared.

The landlord provided the tenant with a repayment plan, as required, for an additional monthly rent installment payment of \$812.50, beginning October 1, 2020. The landlord submitted that the tenants failed to pay the increased monthly rent per the repayment plan. Filed into evidence was a copy of the repayment plan.

The landlord's monetary claim is \$6,500.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

I also find the landlord submitted sufficient evidence to show the tenants accumulated a rent deficiency of \$6,500 during the time period of March 18, 2020 to August 17, 2020 and have not paid any installments on this deficiency owed under the repayment plan. I find the amount of \$6,500 was owed under the written tenancy agreement and was not paid.

The Notice sets out for the benefit of the tenants that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenants applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

I find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or June 3, 2022.

As a result, I order the tenancy ended on June 3, 2022, and grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenants.

The landlord may choose when they serve the tenants with the order of possession.

Monetary claim-

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenants owe the amount for unpaid rent due under the tenancy agreement.

I also grant the landlord recovery of the filing fee of \$100.

I find the landlord has established a total monetary claim of **\$6,600**, for the unpaid monthly rent of \$6,500 and the filing fee of \$100.

I grant the landlord a **monetary order** pursuant to section 67 of the Act for the amount of **\$6,600**.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are **cautioned** that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent has been granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 30, 2022