



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR MNR-DR FFL

Introduction

This matter originally proceeded by way of Direct Request proceeding seeking remedy under section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlords for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 29, 2022 (10 Day Notice), for a monetary order of \$2,750 for unpaid rent and to recover the cost of the \$100 filing fee. On July 20, 2022, an adjudicator adjourned the matter to a participatory hearing which was held on this date, Tuesday, November 22, 2022 at 11:00 a.m. Pacific Time. An Interim Decision dated July 20, 2022 was issued, which should be read in conjunction with this decision.

The landlords, IN and SN (landlords) attended the participatory hearing and were affirmed. During the hearing the landlords were 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.

As the tenants did not attend the hearing, service of the Notice of an Adjourned Dispute Resolution Proceeding dated July 20, 2022 (Notice of Adjourned Hearing), application and documentary evidence (Adjourned Hearing Package) were considered. The landlords testified that the Adjourned Hearing Package was served on each of the two tenants separately by registered mail on July 21, 2022. Two registered mail tracking numbers have been included on the cover page of this Decision for ease of reference. According to the Canada Post online registered mail tracking website, the tenants failed to pick up their registered mail packages and both were marked as “unclaimed” and were returned to the sender, the landlords. Section 90 of the Act states that documents served by mail are deemed served 5 days after they are mailed. Given the above, I find that both tenants were deemed served as of July 26, 2022.

Based on the above and without any evidence before me to prove to the contrary, and the fact that the tenants were deemed served and did not attend the hearing, I consider this matter to be unopposed by the tenants. The hearing proceeded without the tenants present pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rule) 7.1 and 7.3, which address the consequences for failing to attend a dispute resolution hearing.

Preliminary and Procedural Matters

The landlords confirmed their email address at the outset of the hearing and stated that they understood that the Decision and any applicable orders would be emailed to them. As the landlords did not have an email address for the tenants, the Decision will be sent by regular mail to the tenants.

The landlords testified that in addition to the rent owed in the original claim for \$2,850 for unpaid March 2022 rent with filing fee, the tenants have subsequently not paid the rent for April, May, June, July, August, September, October and November of 2022 at \$2,750 per month so requested to amend their application to the current amount of rent owed, \$24,750 as of the date of this hearing. The landlords also stated that the tenants continue to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$2,850 to \$24,750 before the filing fee. The landlords also stated that they would not like to offset any amount owing with the security deposit of the tenants as the tenants have not vacated the rental unit.

Issues to be Decided

- Are the landlords entitled to an order of possession under the Act?
- Are the landlords entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 15, 2021, and was scheduled to convert to a month-to-month tenancy after March 15, 2022. Monthly rent in the amount \$2,750 is due on the first day of each month.

The landlords testified that the 10 Day Notice was served on the tenants at the rental unit by posting to the tenants' door on March 29, 2022. The 10 Day Notice indicates that \$2,750 was owed in rent as of March 1, 2022. The landlords affirmed that the tenants continue to occupy the rental unit and now owe a total of \$25,750 in unpaid rent.

The landlords testified that the tenants did not dispute the 10 Day Notice or pay the rent owing as listed on the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was April 9, 2022, which has passed.

The landlords are seeking an order of possession, a monetary order for unpaid rent, to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlords during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlords' undisputed testimony and I find that the tenants failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. Section 90 of the Act states that documents posted to the door are deemed served 3 days after they are posted. Therefore, I find the tenants were deemed served with the 10 Day Notice as of April 1, 2022. Section 53 of the Act automatically corrects the effective vacancy date and as a result, I find the effective vacancy date automatically corrects from April 9, 2022 to April 11, 2022. I find the tenants are conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was April 11, 2022. The tenants continue to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

I find the tenancy ended on **April 11, 2022**, and that the tenants have overheld the rental unit since that date.

Claim for unpaid rent and loss of rent – Firstly, as the tenants were deemed served and did not attend the hearing, I find the application of the landlords to be unopposed by the tenants. I accept the undisputed testimony of the landlords that the tenants owe rent as claimed in the amount of \$25,750 and as noted above.

Pursuant to section 26 of the Act, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlords have met the burden of proof and has established a monetary claim of **\$25,750** as indicated above.

As the landlords have succeeded with their application, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100**, pursuant to section 72 of the Act. This increases the monetary claim to \$25,850. I grant the landlords a monetary order pursuant to section 67 of the Act in the total amount of **\$25,850** owing by the tenants to the landlords.

I CAUTION the tenants not to breach section 26 of the Act in the future.

Conclusion

The landlords' application is fully successful.

The landlords have been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenancy ended on April 11, 2022.

The landlords have established a total monetary claim of \$25,850. I grant the landlords a monetary order in that amount. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants are cautioned that they can be held liable for all costs related to the enforcement of the monetary order and the order of possession, including, but not limited to court fees and court bailiff fees.

The tenants have been cautioned as described above.

The Decision and orders will be emailed to the landlords for service on the tenants. The tenants will be sent the Decision by regular mail as indicated above.

This Decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2022

Residential Tenancy Branch