



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNR, MNDCT, RR, RP, FFT
OPR, MNRL-S, MNDCL-S, FFL

Introduction

The landlord seeks an order of possession pursuant to sections 46 and 55 of the *Residential Tenancy Act* (the “Act”). The landlord also seeks a monetary order for unpaid rent and recovery of the cost of the application filing fee.

An agent for the landlord attended the teleconference hearing at 9:30 AM on Friday, December 16, 2022. The tenants did not attend or participate in the hearing which ended at 9:39 AM. As such, the tenants’ cross-application is dismissed in its entirety without the option to reapply.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?

Background and Evidence

The landlord’s agent (hereafter the “landlord”) testified under oath and submitted documentary evidence in support of the landlord’s application that the tenancy began on December 1, 2021. Monthly rent which is due on the first day of the month is \$2,800.00. There is a \$1,400.00 security deposit and a \$1,400.00 pet damage deposit. There is in evidence a copy of the residential tenancy agreement.

Various notices to end tenancy under section 46 of the Act were served on the tenants. The most recent one was served by registered mail on November 9, 2022. Copy of the notices in evidence and all pages of the notice were served on the tenants. Copies of Canada post registered mail tracking information was provided by the landlord into evidence. The landlord testified that the tenants have not paid any rent since April 2022. As of December 1, rent arrears are in the amount of \$26,300. It should be noted that the landlord waives its claim for \$734.00 related to a fire department call out.

Analysis

In an administrative hearing, the person making a claim must provide evidence that it is more likely than not that the facts occurred as claimed. This is known as the “balance of probabilities” standard of proof. The burden of proof is on the person making the claim.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord's evidence shows that the tenants did not pay the rent on April 1, 2022 or any month thereafter. Therefore, I find on a balance of probabilities that the various notices to end tenancy under section 46 were given for a valid reason, namely, the tenants' non-payment of rent. I also find that the various notices comply with the form and content requirements of section 52. By default, the notices to end tenancy are upheld and the tenants' application to cancel the notices is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenants. The tenants have two days to vacate the rental unit from the date of service (or deemed service as per section 90 of the Act). The order of possession is enforceable in the Supreme Court of British Columbia.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenants are ordered to pay \$26,300.00 to the landlord.

Since the landlord was successful in their application, they are entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act. In total, the landlord is awarded \$26,400.00.

Under section 38(4)(b) of the Act, the landlord is ordered to retain the \$2,800.00 security and pet damage deposits as partial satisfaction of the payment order. A monetary order for the remaining balance (\$23,600.00) is issued with this Decision to the landlord, who must serve the monetary order upon the tenants.

The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

IT IS HEREBY ORDERED THAT:

1. The tenants' application is DISMISSED without leave to reapply.
2. The landlord's application is GRANTED.
3. The tenants are ordered to pay \$23,600.00 to the landlord.
4. The landlord is granted a monetary order for this amount.
5. The landlord is granted an order of possession of the rental unit.
6. The tenancy is ended effective December 16, 2022.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 16, 2022

Residential Tenancy Branch