



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Landlord: FFL, OPR, MNRL
Tenants: CNR, PSF, OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent or money owed pursuant to section 67.
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlords to provide services or facilities required by law pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:47 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords and their agent, DT, attended the hearing and were 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 landlords and I were the only ones who had called into this teleconference.

The landlords were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. All parties confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenant did not attend this hearing, I order their entire application dismissed without leave to reapply.

The landlords testified that on October 27, 2022, they had sent a copy of the Application for Dispute Resolution hearing and evidence package ('Application') to the tenant by way of registered mail. The landlord provided the tracking information and proof of service in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with copies of the landlord's application and evidence on November 1, 2022, 5 days after mailing.

The landlords provided detailed evidence of how the tenant was served with the 10 Day Notice dated October 4, 2022 by way of posting the 10 Day Notice on the tenant's door on October 4, 2022 after 3:45 p.m. The landlord provided proof of service in their evidentiary materials with a detailed description of the what had taken place. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on October 7, 2022, 3 days after posting.

Although the landlords had applied for a monetary Order of \$6,550.00 in their initial claim for unpaid rent, since they applied another \$3,200.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlords' request to amend their original application from \$6,550.00 to \$9,750.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to recover the filing fee for this application?

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 on October 31, 2019, with monthly rent currently set at \$1,600.00, payable on the first of the month. No security deposit was collected for this tenancy.

The landlords served the tenants with a 10 Day Notice on October 4, 2022 for failing to pay \$6,500.00 in outstanding rent. The landlord testified in the hearing that the tenant has not paid any rent since being served with the 10 Day Notice on October 4, 2022. The landlords provided a detailed summary of the payments made by the tenant, and what the tenant still owes. The landlords are seeking an Order of Possession, as well as a Monetary Order for unpaid rent.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenant failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenant pay the outstanding rent. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 17, 2022.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenant and anyone on the premises to vacate the premises by October

17, 2022.. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, 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 landlords provided a detailed summary of the rent owed by the tenant as of the hearing date. I am satisfied that the tenant has failed to pay \$9,750.00 in outstanding rent. On this basis, I allow the landlords to recover the unpaid rent.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

I dismiss the tenant's entire application without leave to reapply.

I find that the landlord's 10 day Notice is valid and effective as of October 17, 2022. I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant(s)**. Should the tenant(s) 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 \$9,850.00 Monetary Order in favour of the landlords for recovery of the unpaid rent and filing fee.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: December 08, 2022