



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This matter commenced by way of an ex parte Direct Request Proceeding pursuant to section 55(4) of the Residential Tenancy Act (the Act). However, in an Interim Decision dated November 8, 2022, an adjudicator ordered that the matter be adjourned to a participatory hearing.

The Landlord seeks an order of possession and a monetary order for unpaid rent, and to recover the filing fee, pursuant to the Act.

The Landlord was represented at the hearing by BM, an agent. Also in attendance for the Landlord was CK, a witness. Both BM and CK provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, BM testified that the Tenant was served with the Notice of Dispute Resolution Proceeding package by registered mail on November 10, 2022. A copy of a Canada Post registered mail receipt which showed the tracking number was submitted in support. Pursuant to sections 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on November 15, 2022, five days after they were sent by registered mail.

BM was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

On behalf of the Landlord, BM testified that the tenancy began on June 1, 2021. Rent of \$1,624.00 per month is due on the first day of each month. The amount of rent due was supported by a Notice of Rent Increase which was effective July 1, 2022. The Tenant paid a security deposit of \$800.00. A copy of the signed tenancy agreement was submitted into evidence.

BM testified the Tenant did not pay rent when due. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2022, for \$1,624.00 in unpaid rent (the 10 Day Notice). BM testified the 10 Day Notice was served on the Tenant by leaving a copy in a mailbox or mail slot at the Tenant's residence on September 2, 2022, and that service in this manner was witnessed by CK.

On behalf of the Landlord, BM testified that the Tenant also did not pay rent when due on October 1, November 1, and December 1, 2022, and that \$6,496.00 is currently outstanding (\$1,624 x 4 months).

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms that 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.

Section 46 of the Act permits a landlord to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy. The notice to end tenancy must comply with form and content requirements of section 52 of the Act. I have examined the 10 Day Notice submitted into evidence and find that it signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. Therefore, I find the 10 Day Notice complies with section 52 of the Act.

In this case, BM testified, and I find, that the 10 Day Notice was served on the Tenant leaving a copy in a mailbox or mail slot at the Tenant's residence on September 2, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. Therefore, I find the 10 Day Notice is deemed to have been received by the Tenant on September 5, 2022. Accordingly, pursuant to section 46(4) of the Act, the Tenant had until September 10, 2022 to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. However, there was no evidence the Tenant disputed the 10 Day Notice in accordance with section 46(4) of the Act, and the affirmed testimony of BM confirms rent has not been paid. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Further, I find the Tenant did not pay rent as described by BM. Therefore, I find the Landlord has established an entitlement to unpaid rent in the amount of \$6,496.00.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$6,596.00, which is comprised of \$6,496.00 in unpaid rent and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$6,596.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 14, 2022

Residential Tenancy Branch