



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR MNDC FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on December 8, 2022. The landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing and provided affirmed testimony. However, the Tenant did not appear. The Landlord stated that they sent the Notice of Dispute Resolution Proceeding and evidence by registered mail on July 26, 2022. The Landlord sent a second and third package of evidence on October 31, 2022, and November 17, 2022. Proof of mailing was provided at the hearing. Pursuant to section 90 of the Act, I find the Tenant is deemed to have received these packages 5 days after they were sent.

The Landlord has requested to amend their application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

Preliminary and Procedural Issues

The Landlord is seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues and based on the evidence before me, I find the most pressing issues in this application are related to the payment/non-payment of rent and the related order of possession. As a result, I exercise my discretion to dismiss all grounds on the Landlord's application except for his request for:

- an order of possession for unpaid rent or utilities based off a 10 Day Notice to End Tenancy (the Notice); and,
- a monetary order for unpaid rent or utilities.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that rent, in the amount of \$1,250.00, is due on the first day of each month, and that he holds a security deposit of \$600.00.

The Landlord testified that they issued the Notice on June 22, 2022, by posting it to the Tenant's door. The amount owing at that time was \$9,150.00 for rent that was unpaid from November 2021 – June 2022, as per the worksheet provided. The Landlord testified that the Tenant did not make any payments towards his rent owing until September 5, 2022, when he paid \$600.00. Another payment was made on September 13, 2022, in the amount of \$500.00, and a 3rd and final payment was made on October 1, 2022 in the amount of \$1,250.00. The Landlord stated that the Tenant has not made any further payments, despite living in the rental unit.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed past due rent at the time the Notice was issued. The landlord posted the Notice to the Tenant's door on June 22, 2022, for \$9,150.00 in unpaid rent. I find the Tenant is deemed to have received the Notice 3 days after it was posted on the door, on June 25, 2022.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant made a few partial payments outside of this window, the evidence before me indicates that the Tenant did not pay the total balance outstanding within 5 days of being served with the 10 Day Notice and did not file to dispute the Notice. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$14,300.00 in past due rent, which includes all rent accrued, and payments made, since November 2021 until December 2022.

The Landlord requested that they be able to retain the security deposit of \$600.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to

offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$14,300.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$600.00)
TOTAL:	\$13,800.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$13,800.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 9, 2022

Residential Tenancy Branch