



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LESLIE PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR-S, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant;
- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit of \$750 to use against a monetary award and
- to recover the cost of the filing fee

At the hearing, the landlord and assistant attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing) and application was considered.

The landlord testified that the tenant was served the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on November 1, 2022. The landlord gave the Canada Post tracking number in the hearing as proof of service and filed the Canada Post receipt showing the tracking number. The tracking number is located on the cover page of this Decision.

Based on the landlord's testimony and evidence, I find the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent and to recover the cost of the filing fee?

Background and Evidence

The landlord filed a written tenancy agreement showing a tenancy start date of February 13, 2020, for a fixed-term through February 28, 2021, monthly rent of \$1,500, due on the first day of the month, and a security deposit of \$750 paid by the tenant.

The landlord filed evidence showing that the monthly rent increased to \$1,522 on January 1, 2022.

The landlord said that on August 25, 2022, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,522 owed as of August 1, 2022. The effective vacancy date listed on the Notice was September 7, 2022. Filed in evidence was a copy of the Notice.

The landlord stated that the tenant has not yet vacated the rental unit and did not pay the amount listed on the Notice within 5 days, or at all. In addition, the tenant did not make the monthly rent payment in September, October, November, or December 2022, according to the landlord. The landlord said that as of the date of the hearing, the tenant now owes the amount of \$7,610 in unpaid monthly rent, through December 2022. The landlord confirmed they wanted to use the tenant's security deposit to partially satisfy any monetary award.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

I find 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 Notice, or September 7, 2022.

As a result, I order the tenancy ended on September 7, 2022, and I grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application of \$1,522, to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes a total amount of unpaid rent of **\$7,610**.

As a result, I find the landlord has established a monetary claim of **\$7,610**, for the outstanding unpaid monthly rent through December 2022, as noted above.

I grant the landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the landlord has established a total monetary claim of **\$7,710**, for the unpaid monthly rent and the filing fee, as noted above.

I direct the landlord to retain the tenant's security deposit and deduct the security deposit amount of \$750 in partial satisfaction of the monetary award of \$7,710. I grant the landlord a **monetary order** for the balance due, pursuant to section 67 of the Act in the amount of **\$6,960**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted in the above terms.

I ordered the tenancy ended on September 7, 2022.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 02, 2022