



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 testified that the Tenants were served with the Notice of Dispute Resolution Proceeding package by registered mail on November 14, 2022. Copies of Canada Post receipts which included the date and time of service and showed the tracking numbers were submitted in support. The Landlord testified these documents were not claimed by the Tenants so were served in person on November 26, 2022. Pursuant to section 71 of the Act, I find these documents were sufficiently served on the Tenants for the purposes of the Act.

The Landlord 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

The Landlord testified that the tenancy began on October 1, 2021. Rent of \$700.00 per month is due on the first day of each month. The Landlord holds a security deposit of \$350.00. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord testified the Tenants 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 (the 10 Day Notice). At that time, rent of \$900.00 remained unpaid. The Landlord testified the 10 Day Notice was served on the Tenants by attaching a copy to the Tenants' door on September 2, 2022.

The Landlord testified that the Tenants' only payment since the 10 Day Notice was issued was on November 4, 2022, in the amount of \$1,400.00. However, at least one of the Tenants continue to occupy the rental unit.

As noted above, the Tenants 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.

In this case, the 10 Day Notice submitted into evidence is signed and dated, gives the address of the rental unit, states an effective date, and states the grounds for ending the tenancy. Although the 10 Day Notice is on a previous version of the form, section 10(2) of the Act confirms that deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used. Therefore, I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

The Landlord testified, and I find, that the 10 Day Notice was served on the Tenants by attaching a copy to the Tenants' door 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 Tenants on September 5, 2022. Accordingly, pursuant to section 46(4) of the Act, the Tenants 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 Tenants disputed the 10 Day Notice in accordance with section 46(4) of the Act, and the affirmed testimony of the Landlord confirms rent was not paid in full. 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 Tenants.

Further, I find the Tenants did not pay rent as alleged by the Landlord. I find the Landlord has established an entitlement to unpaid rent in the amount of \$1,600.00, which has been calculated as follows:

Rent due date	Amount due	Rent paid	Rent outstanding
September 1	\$700.00	\$0	\$900.00
October 1	\$700.00	\$0	\$1,600.00
November 1	\$700.00	\$1,400.00	\$900.00
December 1	\$700.00	\$0	\$1,600.00
Total Rent Outstanding:			\$1,600.00

Having been successful, I also grant the Landlord \$100.00 in recovery of the filing fee paid to make the application.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$1,700.00, which is comprised of \$1,600.00 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 Tenants. 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 \$1,700.00. 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