



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 hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application and evidence for this hearing. I find the tenants duly served with the hearing documents in accordance with sections 88 and 89 of the *Act*. The tenants did not submit any written evidence for this hearing.

The tenants confirmed receipt of the 10 Day Notice to End tenancy dated August 29, 2022, which the tenants were personally served. I find the tenants duly served with the 10 Day Notice on August 29, 2022.

Although the landlord had applied for a monetary Order of \$9,000.00 in their initial claim, the landlord testified that the tenants have not paid any rent since this application was filed. 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. In this case, I find that it can be reasonably anticipated that the tenants owe \$2,000.00 in monthly rent each month. On this basis, I have accepted the landlord's request to amend their original application from \$9,000.00 to \$15,000.00 to reflect the unpaid rent that was owed at the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary compensation for unpaid rent or money owed?

Is the landlord entitled to recover the filing fee?

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 approximately 31 years ago. The landlord purchased the property on or around June 2020. Both parties confirmed that monthly rent is currently set at \$2,000.00, payable on the first of the month. No security deposit was collected for this tenancy.

The tenants were served with a 10 Day Notice for Unpaid Rent on August 29, 2022 for failing to pay \$5,000.00 in outstanding rent. The landlord testified that since the 10 Day Notice was served, the tenants have not paid any rent. The landlord testified that as of the hearing date, the tenants now owe \$15,000.00 in outstanding rent. The landlord is requesting a monetary order for the unpaid rent as well as an Order of Possession for January 31, 2023.

The tenants do not dispute that the rent remains unpaid, but testified that they do not feel that it is fair that they should pay this amount. The tenants testified that they cannot remember the last time they had paid the monthly rent, but stated that they assume the amount owed is \$15,000.00. The tenants testified that they had lived there for 31 years, and that they were struggling financially after a work place injury.

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 tenants have 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 tenants pay the outstanding rent. Accordingly, I find that the tenants are 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, September 10, 2022.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenants and anyone on the premises to vacate the premises by September 10, 2022. As this has not occurred, I find that the landlord is entitled to an Order of Possession against the tenants, 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 landlord provided undisputed evidence that the tenants failed to pay \$15,000.00 in outstanding rent for this tenancy. On this basis, I allow the landlord to recover the unpaid rent.

As the landlord was successful with this application, I allow the landlord to recover the filing fee.

Conclusion

I find that the landlord's 10 day Notice is valid and effective as of September 10, 2022.

I grant an Order of Possession to the landlord effective January 31, 2023, which must be served on the tenants. Should the tenants and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is issued a monetary order in the amount of \$15,100.00 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: January 16, 2023

Residential Tenancy Branch