



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- for an order of possession pursuant to section 55 of the Act
- for a monetary order pursuant to section 67 of the Act

Landlord BX appeared with interpreter KY and agent GC. Tenant HS appeared for herself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy (“10 Day Notice”) dated August 19, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act

The tenant also confirmed receipt of the dispute notice and landlord’s evidence package in respect of the application. Pursuant to sections 88 and 89 of the Act I find that the tenant was properly served.

Preliminary Issue

The tenant’s name was spelled incorrectly on the application for dispute resolution and was amended according to section 64(3)(c) of the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy commenced on or about May 5, 2020. Rent was \$1,500.00 per month due on the first day of the month. There were no security or pet deposits paid. The tenant still occupies the rental unit. A written tenancy agreement was produced in evidence.

The landlord stated through the interpreter and advocate that the tenant paid \$880.00 rent in April 2022, \$880.00 in July, 2022. As of August 1, 2022 the tenant was \$7,120.00 in arrears on rent. As of the hearing date, the tenant was \$13,120.00 in arrears on rent. The landlord provided the following worksheet in support:

Accounting of Monies Owed				
Rent Due Date	Rent Amount Owing	Date of Payment	Amount of Partial Payment(s)	Balance
October 01, 2021	\$ 1,500.00	October 25, 2021	\$ 950.00	\$ 550.00
November 01, 2021	\$ 1,500.00	November 1, 2021	\$ 750.00	\$ 1,300.00
April 01, 2022	\$ 1,500.00	N/A	\$ 880.00	\$ 1,920.00
May 01, 2022	\$ 1,500.00	N/A	\$ -	\$ 3,420.00
June 01, 2022	\$ 1,500.00	N/A	\$ -	\$ 4,920.00
July 01, 2022	\$ 1,500.00	July 05, 2022	\$ 800.00	\$ 5,620.00
August 01, 2022	\$ 1,500.00	N/A	\$ -	\$ 7,120.00
September 01, 2022	\$ 1,500.00	N/A	\$ -	\$ 8,620.00
October 01, 2022	\$ 1,500.00	N/A	\$ -	\$ 10,120.00
November 01, 2022	\$ 1,500.00	N/A	\$ -	\$ 11,620.00
December 01, 2022	\$ 1,500.00	N/A	\$ -	\$ 13,120.00
TOTAL	\$ 16,500.00		\$ 3,380.00	\$ 13,120.00

The tenant did not dispute that she was in rent arrears. She stated that the rental unit was rented as an Air BnB unit although was unclear whether she was arguing that the Act did not apply to this tenancy. The landlord stated that this unit was not rented as an Air BnB.

Analysis

I find that a tenancy under the Act was created between the parties. There is a written tenancy agreement in evidence. The tenant did not dispute that the tenancy commenced in May 2020. RTB Policy Guideline 9 states:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

Based on the evidence before me, this tenancy met the criteria outlined in the policy, and the Act applies.

The 10 Day Notice served on the tenant is valid and enforceable, as it complies with the form and content requirements of section 52 of the Act, and the tenant did not dispute the evidence of the landlord stating that the tenant was in arrears on rent. Section 46(5) states:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore, the landlord is entitled to an order of possession under section 55(4) of the Act for the rental unit.

Based on the undisputed evidence of the landlord regarding unpaid rent as of the date of the hearing, I find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$13,120.00.

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 must be 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 for \$13,120.00 for recovery of unpaid rent. The monetary order must be served on the tenant. 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: January 2, 2023

Residential Tenancy Branch