



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR

Introduction

On August 22, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the Landlords’ application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The Adjudicator adjourned the direct request for the following reasons:

I find that the residential tenancy agreement submitted by the landlords is not signed by the tenant, which is a requirement of the Direct Request process, and that a participatory hearing is necessary in order to protect the procedural rights of the tenant.

This hearing dealt with the Landlords’ application under the Act for:

- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent dated June 16, 2022 (“the 10 Day Notice”) pursuant to section 55; and
- a Monetary Order of \$1,150.00 for unpaid rent pursuant to section 67.

The Landlords’ agent GC attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 9:40 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that GC and I were the only ones who had called into the hearing.

I confirmed with GC that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

GC confirmed that the notice of dispute resolution proceeding package (the “NDRP Package”) was sent to the Tenant via registered mail on August 26, 2022. The Landlords submitted a tracking number in support (referenced on the cover page of this decision). Tracking records indicate that a notice card for the package was left on August 29, 2022, and the package was eventually returned to the sender as unclaimed.

GC testified that the rental unit is a coach house on the property where the Landlords live. GC confirmed the Landlords are aware that the Tenant continues to reside in the rental unit. GC testified the Landlords also issued another 10 day notice to end tenancy for unpaid rent in October 2022, but the Tenant has not responded to any of the Landlords’ attempts to communicate.

Residential Tenancy Policy Guideline 12. Service Provisions states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find the Tenant was served with the NDRP Package in accordance with sections 89(1)(c) and 89(2)(b) of the Act. Based on GC’s testimony and pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the NDRP Package on the fifth day after mailing, or August 31, 2022.

Having found the Tenant to have been deemed served with notice of this hearing, I directed that this hearing continue in the Tenant’s absence.

Preliminary Matter – Adjudicator’s Concern in Interim Decision

Based on GC’s undisputed testimony under oath during this hearing, I accept that there was a tenancy between the parties and that the Landlords had received a copy of the tenancy agreement from the previous owners, although that copy did not have the

Tenant's signature. As stated in section 1 of the Act, a tenancy agreement is an agreement, "whether written or oral, express or implied", between a landlord and a tenant respecting possession of a rental unit. I accept GC's testimony that when the Landlords purchased the property, the Tenant was already residing in the rental unit as a tenant and had agreed to pay rent of \$1,150.00 per month. I find that this resolves the Adjudicator's concern as noted in the interim decision dated August 22, 2022.

Preliminary Matter – Amendment of Landlords' Application

GC testified the Tenant has not left the rental unit and has made any payment to the Landlords since June 2022.

I note the Landlords' monetary claim on this application lists only \$1,150.00 for unpaid June 2022 rent. I find that the Landlord is seeking an amendment to this application in order to request monetary compensation for overholding by the Tenant under section 57 of the Act.

Rule 4.2 of the Rules of Procedure states:

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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Since the Tenant has not left the rental unit, I find the Tenant can reasonably anticipate the Landlords to seek additional payment for use and occupancy of the rental unit to the date of the hearing, or January 6, 2023. Accordingly, I allow the Landlords to amend this application to include a monetary claim for compensation for overholding by the Tenant up to January 6, 2023.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to compensation for unpaid rent?
3. Are the Landlords entitled to compensation for overholding by the Tenant?

Background and Evidence

This tenancy commenced on August 1, 2018 with the previous owners of the property as landlord. The Landlords purchased the property in May 2022. At the time that the Landlords purchased the property, the tenancy had become month-to-month. Rent was \$1,150.00 due on the first day of each month. The Landlords hold a security deposit of \$575.00 and a pet damage deposit of \$575.00 in trust for the Tenant.

A copy of the tenancy agreement is submitted into evidence. GC acknowledged that this agreement is not signed by the Tenant. GC confirmed that this is the copy the Landlords had received from the previous owners.

The Landlords also submitted a copy of the 10 Day Notice into evidence. The 10 Day Notice has an effective date of June 18, 2022, and states that the Tenant failed to pay rent of \$1,150.00 due on June 1, 2022. There is a discrepancy with the Landlords' names on the 10 Day Notice and as stated on this application. GC confirmed that those are the Landlords' shortened given names on the 10 Day Notice.

GM confirmed that a copy of the 10 Day Notice was left in the Tenant's mailbox on June 16, 2022. The Landlords submitted a signed and witnessed proof of service in support.

Analysis

1. Are the Landlords entitled to an Order of Possession?

Section 26(1) of the Act states that a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed a copy of the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenant was served with a copy of the 10 Day Notice in accordance with section 88(f) of the Act on June 16, 2022. Pursuant to section 90(d) of the Act, I find the Tenant is deemed to have received the 10 Day Notice on June 19, 2022.

Section 46(4) of the Act permits a tenant to dispute a 10 day notice to end tenancy for unpaid rent within 5 days after receiving such notice. Therefore, the Tenant had until June 24, 2022 to dispute the 10 Day Notice. In this case, the Tenant did not apply to dispute the 10 Day Notice by June 24, 2022 or at all.

Section 46(5) of the Act states that if a tenant who has received a notice under section 46 does not pay the rent or make an application for dispute resolution in accordance with section 46(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I note the effective date of the 10 Day Notice does not comply with section 46(1) of the Act, which requires the effective date to be “not earlier than 10 days after the date the tenant receives the notice”. However, section 53(2) of the Act automatically changes incorrect effective dates to “the earliest date that complies with the section”, which in this case is June 29, 2022.

Therefore, I find that pursuant to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on June 29, 2022, the corrected effective date of the 10 Day Notice.

Furthermore, sections 55(2)(b) and 55(4) of the Act state as follows:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Based on the above, I have found the 10 Day Notice was deemed served on June 16, 2022, the time for disputing the 10 Day Notice expired on June 19, 2022, and the Tenant did not pay the overdue rent or make an application for dispute resolution. Accordingly, I conclude that the Landlords are entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

As the corrected effective date of the 10 Day Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

2. Is the Landlord entitled to compensation for unpaid rent?

I find that the Tenant did not pay rent when due on June 1, 2022. Pursuant to section 55(4)(b) of the Act, I order that the Tenant pay to the Landlords \$1,150.00 for unpaid June 2022 rent.

3. Is the Landlord entitled to compensation for overholding by the Tenant?

Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Section 57(1) of the Act defines an “overholding tenant” as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

Based on the Landlords’ undisputed evidence, I find the Tenant is an overholding tenant under section 57(1) of the Act, and that the Landlords are entitled to compensation for the Tenant’s use of the rental unit up to and including the date of the hearing.

Pursuant to section 57 of the Act, I order that the Tenant pay to the Landlords \$7,122.58 (equivalent to \$1,150.00 × 6 months + \$1,150.00 × 6/31 days) as compensation for overholding from July 2022 to January 6, 2023.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the \$575.00 security deposit and \$575.00 pet damage deposit held by the Landlords in partial satisfaction of the total sum awarded in this decision.

The Monetary Order granted to the Landlords for the balance is calculated as follows:

Item	Amount
Unpaid Rent for June 2022	\$1,150.00
Compensation for Overholding to January 6, 2023 (\$1,150.00 × 6 months + \$1,150.00 × 6/31 days)	\$7,122.58
Less Security Deposit and Pet Damage Deposit	- \$1,150.00
Total Monetary Order for Landlords	\$7,122.58

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective two (2) days after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords are authorized to retain the Tenant's \$575.00 security deposit and \$575.00 pet damage deposit in partial satisfaction of the sum awarded in this decision.

Pursuant to sections 55 and 57 of the Act, I grant the Landlords a Monetary Order in the amount of **\$7,122.58**. The Tenant must be served with this Order as soon as possible. Should the Tenant 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 06, 2023

Residential Tenancy Branch