



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, LRE, LAT
 LL: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on October 8, 2022 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid Rent;
- an order permitting the tenants to change the locks to the rental unit; and
- an order restricting the Landlord’s right to enter the rental unit.

The Landlord’s Application for Dispute Resolution was made on October 14, 2022 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenants had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenants’ Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30am on January 10, 2022 as a teleconference hearing. Only the Landlord attended the hearing. No one called in for the Tenants. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online

teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord stated that he served a copy of the Notice of Hearing and evidence to each Tenant by Registered Mail on October 28, 2022. The Landlord provided the tracking information in support. Pursuant to Section 89 and 90, I find the Tenants are deemed to have been served five days later, on November 2, 2022.

Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. As no one attended the hearing for the Tenants, I dismiss their Application in its entirety without leave to reapply.

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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified to the following; the tenancy began on October 1, 2022. The Tenants are required to pay rent in the amount of \$1,750.00 which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$875.00 and a pet damage deposit in the amount of \$400.00. The Landlord confirmed he is currently holding \$1,275.00 in deposits from the Tenants. The Landlord stated that the Tenants continue to occupy the rental unit. The Landlord provided a copy of the tenancy agreement in support.

The Landlord testified that the Tenants did not pay rent for October 2022. The Landlord testified that he subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$1,750.00, dated October 4, 2022 (the "10 Day Notice") with an effective vacancy date of October 14, 2022. The Landlord stated that the 10 Day Notice was served to the Tenants in person on October 7, 2022. The Landlord provided a copy of the 10 Day Notice, and also a witnessed proof of service document showing each Tenant was served with the 10 Day Notice on October 7, 2022.

The Landlord stated that the Tenants have not made any payments towards the unpaid rent since receiving the 10 Day Notice. Furthermore, the Landlord stated that the Tenants have not paid any rent for November 2022, December 2022, and January 2023. The Landlord stated that the Tenants currently have an outstanding balance of rent owed in the amount of \$7,000.00. The Landlord is seeking a monetary order for the balance of rent owed, as well as an order of possession.

Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the Landlord served the 10 Day Notice to each Tenant in person on October 7, 2022. Pursuant to Section 88 and 90, the Tenants are deemed to have been served with the 10 Day Notice on October 7, 2022.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. While the Tenants made an Application to cancel the 10 Day Notice on October 8, 2022, no one attended the hearing for the Tenants which has resulted in their Application being dismissed without leave to reapply.

As a result, pursuant to section 46(5) of the *Act*, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. I find that the 10 Day Notice complies with the requirements for form and

content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective **2 (two) days**, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); 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.

I find the Landlord has established an entitlement to a monetary award for unpaid rent from October 2022 to January 2023 in the amount of \$7,000.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security and pet damage deposits held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$5,825.00, which has been calculated as follows:

<i>Claim</i>	<i>Amount</i>
Unpaid rent:	\$7,000.00
Filing fee:	\$100.00
<i>LESS security/pet deposit:</i>	<i>(\$1,275.00)</i>
TOTAL:	\$5,825.00

Conclusion

The Tenants breached the tenancy agreement by not paying rent when due to the Landlord.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and 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 \$5,825.00. The monetary order should be served to the Tenants as soon as possible and 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 10, 2023

Residential Tenancy Branch