



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding LE GERS PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-DR, MNR-DR, FFL
CNR, MNRT, MNDCT, RR, RP, PSF, LRE, LAT, OLC

Introduction

The landlord seeks an order of possession and a monetary order based on a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) pursuant to sections 46, 55, and 55(1.1) of the *Residential Tenancy Act* (the “Act”). They also seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

The tenant filed a cross-application in which he sought various relief. Because the tenant failed to attend the hearing, which was scheduled on January 3, 2023 at 9:30 AM, the tenant’s application is dismissed in its entirety without leave to reapply.

Issues

1. Is the landlord entitled to an order of possession of the rental unit?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began on September 1, 2020. Monthly rent is \$908.00, and it is due on the first day of the month. The tenant paid a \$447.50 security deposit which the landlord holds in trust pending the outcome of this dispute. A copy of the written tenancy agreement was submitted into evidence by the landlord.

The landlord (represented by F.D.) give evidence under oath that the Notice was served on the tenant by being posted on the door of the rental unit on July 6, 2022. All pages of the Notice were served on the tenant. The Notice indicated that rent in the amount of \$908.00 was due on July 1st, 2022. A copy of the Notice was submitted into evidence.

The tenant did not file an application to dispute the notice until August 4, 2022.

The landlord testified under oath that as of January 1, 2023, rent arrears are \$6,356.00. In addition, the tenant has accumulated late rent fees in the amount of \$25 for seven months for a total of \$175.00. In total, the tenant owes the landlord \$6,531.00.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord's evidence shows that the tenant did not pay the rent on July 1, 2022 or for any month since. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the tenant's non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed. (Notwithstanding that the tenant had accepted the validity of the Notice by not filing his application in time; see section 46(5) of the Act).

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two (2) days to vacate the rental unit from the date of service or from the date of deemed service.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$6,356.00 to the landlord for unpaid rent. In addition, the landlord is entitled to \$175.00 in late fees, as per the tenancy agreement.

Since the landlord was successful in their application, they are entitled to \$100.00 to cover the cost of the application filing fee under section 72 of the Act. In total, the landlord is awarded \$6,631.00.

Pursuant to section 38(4)(b) the landlord is authorized to retain the \$447.50 security deposit as partial satisfaction of the payment order. A monetary order for the remainder (\$6,183.50) is attached to this Decision and must be served on the tenant. The monetary order is enforceable in the Provincial Court of British Columbia.

Conclusion

IT IS HEREBY ORDERED THAT:

1. the tenant's application is dismissed, *without* leave to reapply.
2. the landlord's application is granted.
3. the tenancy ended on July 19, 2022.
4. the landlord is granted an order of possession.
5. the landlord shall retain the tenant's security deposit.
6. the landlord is granted a monetary order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 3, 2023

Residential Tenancy Branch