



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR, OPC, FFL**

Introduction

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

- an order of possession pursuant to section 55 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlords DM, VM and advocate VMJ appeared. The tenant did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlords testified that the 10 Day Notice to End Tenancy (“10 Day Notice”) dated December 29, 2022 with an effective date of January 7, 2023 and the One Month Notice to End Tenancy (“One Month Notice”) dated December 29, 2022 were attached to the tenant’s door on December 29, 2022. The landlord’s advocate witnessed the tenant take the notices off the door. A picture of the notices posted to the door and a Proof of Service form were uploaded in evidence. Pursuant to sections 88 and 90 of the Act the tenants are found to have been served with both notices in accordance with the Act.

The landlords sent the dispute notice and evidence package to the tenant by registered mail on January 19, 2023. They provided a post office receipt for registered mail dated January 19, 2023 in evidence. I find the tenant deemed served on January 24, 2023 in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue

Pursuant to section 53 of the Act I amend the effective date of the 10 Day Notice to January 8, 2023 to properly reflect the 10 day period required under the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, are the landlords entitled to an order of possession?
2. Is the One Month Notice valid and enforceable against the tenant? If so, are the landlords entitled to an order of possession?
3. Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced April 1, 2021 on a month to month basis. Rent was \$875.00 per month due on the 28th day of the month. The landlords hold a security deposit of \$400.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlords testified that the tenant paid rent on December 31, 2022 after being served with the 10 Day Notice, however he was only paid \$870.00 which is not the full rent amount. There is still \$5.00 outstanding in rent.

The landlords further allege that the tenant has been repeatedly late in paying rent and is rude and abusive to the landlords, who live in the upstairs unit. They are afraid of the tenant due to his abusive behaviour.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlords may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The 10 Day Notice sets out for the benefit of the tenant that the 10 Day Notice would be cancelled if the rent was paid within five (5) days. The 10 Day Notice also explained

that alternatively the tenant had five days to dispute the 10 Day Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the 10 Day Notice.

I find the landlords submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the full amount of outstanding rent, or file an application for dispute resolution in dispute of the 10 Day Notice within five days of service.

I find the tenant is 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, or January 8, 2023.

As a result, I order the tenancy ended on January 8, 2023, and I grant the landlords an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

As the landlords are successful in their application they are entitled to recover the \$100.00 filing fee.

Conclusion

The landlords are 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 landlords are also permitted to deduct \$100.00 from the tenant's security deposit in satisfaction of the filing fee.

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: February 26, 2023