



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on February 17, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice to End Tenancy for Cause
- a monetary order for unpaid rent or utilities

The Landlord provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Landlord testified that he served the Tenant, in person, with the Notice of Dispute Resolution Proceeding along with supporting documentary evidence on October 21, 2022. The Landlord testified that service of this document was witnessed by a third party. I find the Tenants received the package on this day.

The Landlord was provided 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 to be Decided

- Is the Landlord entitled to an order of possession under the *Act*?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that he served the Tenant with a One Month Notice to End Tenancy for Cause (the Notice) by posting it to the door on August 31, 2022. This was witnessed by a third party, as per the proof of service document. The Landlord holds a security deposit of \$650.00.

The Notice indicates the reasons for ending the tenancy are:

- Tenant is repeatedly late paying rent.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord stated that the Tenant has a long history of either missing his rent payments altogether, or paying them significantly late. The Landlord stated that rent has been late every month for at least the last year. The Landlord provided a detailed breakdown as to what was paid, and what is owed, throughout the tenancy, as of October 2022. The Landlord stated that since they made the ledger in October, the Tenant has only paid \$700.00 in December 2022, and has not made any other rent payments. The Landlord stated that the Tenant now owes \$19,776.00 up to and including February 2023 rent.

Analysis

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

Section 47 of the *Act* permits a Landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy.

In this case, the Landlord issued the Notice on the bases indicated above. Based on the Landlord's testimony and the proof of service document, I am satisfied that the Landlord served the Tenant with the Notice by posting it to the door on August 31, 2022. Pursuant to section 90 of the *Act*, I find the Tenant received the Notice on September 3, 2022, 3 days after it was posted on the door.

The Tenant had 10 days, until September 13, 2022, to dispute the Notice, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the end of the tenancy.

The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

With respect to the Landlord's application to recover the unpaid rent, I note that section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. There is no evidence the Tenant had any right to withhold rent.

I accept the undisputed testimony and documentary evidence that the Tenant has failed to pay \$19,776.00 in unpaid rent as of the time of this hearing. I find the Landlord is entitled to recover this amount.

As the Landlord's application was successful, and pursuant to section 72 of the *Act* I grant the Landlord the recovery of the cost of the filing fee in the amount of \$100.00. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$19,776.00
Other:	
Filing fee	\$100.00
LESS:	
Security Deposit currently held by Landlord	(\$650.00)
TOTAL:	\$19,226.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of \$19,226.00. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 17, 2023

Residential Tenancy Branch