



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on November 16, 2022 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The hearing was scheduled for 9:30AM on February 9, 2023 as a teleconference hearing. The Landlord appeared at the appointed date and time of the hearing. No one appeared for the Tenant. The conference call line remained open and was monitored for 13 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 testified the Application and documentary evidence package were served to the Tenant by registered mail on January 10, 2023. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on January 15, 2023 the fifth day after their registered mailing.

The Landlord was given an 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, 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 an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on October 5, 2022. Rent in the amount of \$2,400.00 per month is due to the Landlord on the 5th day of each month. The Tenant paid a security deposit in the amount of \$1,200.00, which the Landlord holds. The Landlord stated that the Tenant continues to occupy the rental unit.

The Landlord testified the Tenant did not pay rent when due in November 2022. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 8, 2022 (the "10 Day Notice") with an effective vacancy date of November 18, 2022. At that time, rent in the amount of \$2,400.00 was outstanding. The Landlord testified he served the 10 Day Notice to the Tenant's girlfriend in person on November 8, 2022. The Landlord provided a picture of the service, as well as an email from the Tenant dated November 8, 2022 in which the Tenant confirms receipt of the 10 Day Notice.

The Landlord stated that the Tenant has made no payments towards the outstanding balance of rent owed for November 2022. Furthermore, the Landlord testified that the Tenant also failed to pay rent when due for December 2022, January 2023, and February 2023. The Landlord stated that currently, rent in the amount of \$9,600.00 is outstanding.

As noted above, no one attended the hearing for the to dispute the Landlord's evidence.

Analysis

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

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

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.

The Landlord served the Tenant's girlfriend with the 10 Day Notice in person on November 8, 2022. I accept that the Tenant confirmed that they received the 10 Day Notice in an email dated November 8, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received on the same date. I find the Tenant is deemed to have received the 10 Day Notice on November 8, 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. Therefore, the Tenant had until November 13, 2022 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant has made no payments towards the amount of unpaid rent. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, November 18, 2022, pursuant to section 46(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, 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 Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlord has established an entitlement to a monetary award for unpaid rent for November 2022, December 2022, January 2023, and February 2023 in the amount of \$9,600.00. 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 is entitled to retain the security deposit 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 \$8,500.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$9,600.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-\$1,200.00
TOTAL:	\$8,500.00

Conclusion

The Tenant has breached the *Act* 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 Tenant. If the Tenant fails to comply with the order of possession it 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 \$8,500.00. The monetary order 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: February 09, 2023

Residential Tenancy Branch