



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenants;
- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit of \$1300 to use against a monetary award; and
- to recover the cost of the filing fee.

At the hearing, the landlord's agent (landlord) attended the teleconference hearing. The tenants did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing) and application was considered.

The landlord testified that each tenant was served the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on November 3, 2022. The landlord filed the Canada Post tracking numbers as proof of service and filed the Canada Post receipts showing the tracking numbers.

Based on the landlord's testimony and evidence, I find the tenants were sufficiently served under the Act and the hearing proceeded in the tenants' absence.

During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and to recover the cost of the filing fee?

Background and Evidence

The landlord filed a written tenancy agreement showing a tenancy start date of November 15, 2021, monthly rent of \$2650, due on the first day of the month, and a security deposit of \$1300 paid by the tenants.

The landlord said that on October 6, 2022, the tenants were served with the Notice, by attaching it to the tenants' door, listing unpaid rent of \$2650 owed as of October 1, 2022. The effective vacancy date listed on the Notice was October 20, 2022. Filed in evidence was a copy of the Notice and proof of service.

The landlord stated that the tenants have not vacated the rental unit and did not pay the amount listed on the Notice within 5 days, or at all. The landlord said that as of the date of the hearing, the tenants now owe the amount of \$13,250 in unpaid monthly rent, through February 2023. The landlord confirmed they wanted to use the tenants' security deposit to partially satisfy any monetary award.

Additional evidence filed included a tenant ledger sheet.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

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 landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenants applied to dispute the Notice.

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

I find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the first 10 Day Notice, or October 20, 2022.

As a result, I order the tenancy ended on October 20, 2022, and I grant the landlord 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 tenants.

Should the tenants 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.

The tenants are cautioned that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenants.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application, to account for further unpaid rent as the tenants have yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenants owe a total amount of unpaid rent of **\$13,250**, or \$2650 monthly from October 2022 through February 2023.

As a result, I find the landlord has established a monetary claim of **\$13,250**, for the outstanding unpaid monthly rent through February 2023, as noted above.

I grant the landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the landlord has established a total monetary claim of **\$13,350**, for the unpaid monthly rent and the filing fee, as noted above.

I direct the landlord to retain the tenants' security deposit of \$1300 and deduct this amount in partial satisfaction of the monetary award of \$13,350. I grant the landlord a **monetary order** for the balance due, pursuant to section 67 of the Act in the amount of **\$12,050**.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are **cautioned** that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted in the above terms.

I ordered the tenancy ended on October 20, 2022.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 03, 2023

Residential Tenancy Branch