



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (Act) to obtain an order of possession for unpaid rent or utilities and to recover the cost of the filing fee.

The landlord, a translator for the landlord, KC (translator) and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were 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.

As both parties confirmed having been served with documentary evidence and had the opportunity to review that evidence prior to the hearing, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses during the hearing. The parties were also advised that the decision would be sent by email to both parties.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- If yes, is the landlord also entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the most recent tenancy agreement was submitted for my consideration. The parties agreed that a fixed-term tenancy began on April 16, 2021 and converted to a month-to-month tenancy after April 15, 2022. Monthly rent in the amount of \$2,500 was due on the 15th day of each month. The tenants paid a security deposit of \$1,250 and a pet damage deposit of \$1,250 at the start of the tenancy, which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated July 30, 2022 (10 Day Notice) by posting on the tenants' door on July 31, 2022 with an effective date of August 8, 2022. The tenants did not dispute the 10 Day Notice and did not pay the full amount of rent owed within five days of receiving the 10 Day Notice.

The amount owing on the 10 Day Notice was listed as \$2,500. The parties confirmed that rent for July 2022 was paid on September 8, 2022. The tenants stated that the male tenant accidentally wrote the incorrect name for the landlord on the July 2022 rent cheque, however, the tenants stated that the delayed payment of September 8, 2022, which was due to the landlord not picking up the rent. The parties were advised during the hearing that it is not up to the landlord to pick up rent, it is the tenants that are responsible for ensuring rent is paid to the landlord by the date that it is due.

The landlord submitted copies of gas utility bills and stated that the tenant failed to pay \$140.05 for the April 2013 gas bill which included March 2013 gas usage, and also failed to pay \$84.02 for the May 2013 gas bill, which included April 2013 gas usage.

Given the above, the parties were advised that the tenancy has ended based on the 10 Day Notice, which I will now address below.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice corrects automatically under the Act to August 10, 2022. The tenants are conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice. The tenants continue to occupy the rental unit. Therefore, **I grant** the

landlord an order of possession effective **February 28, 2023 at 1:00PM**. I find the landlord did not reinstate the tenancy by accepting rent since the 10 Day Notice was issued as the landlord has the right not to loss rent while the dispute resolution process is scheduled.

As the landlord confirmed that no rent was owing as of the date of the hearing, I do not grant a monetary order for unpaid rent.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100** pursuant to section 72 of the Act. **I authorize** the landlord to retain \$100 of the tenants' \$1,250 security deposit, which I immediately reduce to \$1,150 in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective **February 28, 2023 at 1:00 PM**. This order must be served on the tenant(s) and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on August 10, 2022.

The tenant's security deposit is now \$100 less or the filing fee, in the reduced amount of \$1,150, effective immediately.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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