



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH XIX c/o Met Living Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On October 4, 2022 the landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated September 5, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent; and
- the filing fee.

The hearing was attended by the landlord's agent ("the landlord"), but not the tenants. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified they served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on each tenant on October 20, 2022, and provided tracking numbers as noted on the cover page of the decision. I find the landlord served the tenants the NDRP and evidence in accordance with section 89 of the Act, and deem it received by each of the tenants on October 25, 2022, pursuant to section 90 of the Act.

The landlord submitted an updated ledger document as evidence. As the landlord testified the additional evidence was not served on the tenants, I have not considered the second ledger in my decision.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began May 1, 2007, rent was \$1,335.74 and increased to \$1,362.45 in January 2023, rent is due on the first of the month, and the tenants paid a security deposit of \$487.50 which the landlord still holds in trust.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The reason indicated on page 2 of the 10 Day Notice is that the tenants have failed to pay rent in the amount of \$2,671.48 due on September 1, 2022.

The landlord testified the 10 Day Notice was served on the tenants by registered mail on September 7, 2022, and provided a tracking number as noted on the cover page.

The landlord testified that rent was paid and owing as follows:

Month	Rent	Rent paid	Monthly outstanding
August 2022	\$1,335.74	\$0.00	\$1,335.74
September 2022	\$1,335.74	\$800.00	\$535.74
October 2022	\$1,335.74	\$0.00	\$1,335.74
November 2022	\$1,335.74	\$0.00	\$1,335.74
December 2022	\$1,335.74	\$0.00	\$1,335.74
January 2023	\$1,362.45	\$0.00	\$1,362.45
February 2023	\$1,362.45	\$0.00	\$1,362.45
Total			\$8,603.60

The landlord submitted as evidence a Monetary Order Worksheet indicating outstanding rent amounts for August and September 2022 and a ledger showing rent payments up

to September 7, 2022. The landlord's testimony was consistent with the evidence submitted.

Analysis

Section 46(1) permits a landlord to 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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord's undisputed testimony and documentary evidence, I find the 10 Day Notice was served on the tenants by registered mail on September 7, 2022, in accordance with section 88 of the Act, and deem the Notice received by the tenants on September 12, 2022, pursuant to section 90 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

I find that the tenants did pay the overdue rent or file an application for dispute resolution within 5 days of September 12, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenants are conclusively presumed under section 46(5) to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 22, 2022, and must vacate the rental unit.

Therefore, I find the landlord is entitled to an order of possession.

As the landlord testified that the tenants still reside in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, February 16, 2023.

The landlord provided affirmed undisputed testimony on the rent payments made by the tenants, and submitted documentary evidence in support.

Considering the rent owing for February 2023, [Policy Guideline 3. Claims for Rent and Damages for Loss of Rent](#) states that a tenant is liable to pay rent until a tenancy agreement ends.

I accept the landlord's undisputed affirmed testimony that the tenants owe outstanding monthly rent for August 2022 to January 2023, totalling \$7,241.15.

I find the landlord is entitled to recover \$7,241.15 in unpaid rent for August 2022 to January 2023, and \$778.54 for February 1-16, 2023 ($1362.45/28 \times 16 = 778.54$), for a total of \$8,019.69 ($7,241.15 + 778.54$).

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenants to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72, I allow the landlord to retain \$487.50 of the tenants' security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order as follows:

Unpaid rent	8,019.69
Filing fee	100.00
Security deposit	-487.50
Owed to landlord	\$7,632.19

Conclusion

The landlord's application is granted.

The landlord is granted an order of possession which will be effective **two days** after it is received by the tenants. The order of possession must be served on the tenants. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of **\$7,632.19** for unpaid rent and recovery of the filing fee. The monetary order must be served on the tenants. 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 17, 2023

Residential Tenancy Branch