



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Edgewood MH Park Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with an application by the corporate Landlord pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. an Order of Possession, pursuant to section 55;
2. a Monetary Order for unpaid rent, pursuant to section 67;
3. authorization to recover the filing fee for this application, pursuant to section 72.

This dispute began as an application via the ex-parte non-participatory Direct Request proceeding and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated October 6, 2022. In their decision, the adjudicator noted a discrepancy in the governing legislation that could only be resolved in a participatory hearing.

CL and MK appeared for the landlord (the “Landlord”). The Landlord testified that the tenant was served the Notice of Hearing, the Interim Decision and supporting evidence by posting it on the door of the rental unit on October 10, 2022. In support of this, the Landlord provided a Proof of Service which indicates the same and includes photographs of the documents attached to the door.

Based on the testimony and evidence of the Landlord and in accordance with sections 88, 89(2) and 90 of the Act, I find that the required documents were served on the tenant on October 10, 2022 and are deemed to have been received by the tenant on October 13, 2022, the third day after they were posted to the door.

The tenant did not appear at the hearing. The hearing proceeded in the tenant’s absence pursuant to Rule of Procedure 7.3.

Issue(s) 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 recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence; however, not all details of the submissions and evidence are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The Landlord testified that the tenancy began November 2, 2021. Rent was set at \$1,000.00 due on the first date of the month. The Landlord testified that rent was increased to \$1,020.00 on January 1, 2023 due on the first date of the month. The landlord currently retains a \$500.00 security deposit and a \$500.00 pet damage deposit in trust for the tenant. A copy of the Tenancy Agreement is included in the evidence.

The Landlord testified that they served the Notice to end the Tenancy (the "Notice") on July 11, 2022, by leaving a copy at the person's residence with an adult who apparently resides with the person. In support of this, the Landlord provided a Proof of Service which indicates the same.

Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,000.00 that was due on June 1, 2022. The tenant has not disputed the Notice.

The Landlord testified that the tenant is still residing in the unit and has not paid any rent since the Notice was issued. The Landlord said rent is outstanding for the months of June, July, August, September, October, November, December 2022 and January and February 2023. The Landlord is seeking an order of possession, a monetary order for unpaid rent and recovery of the filing fee for this application.

Analysis

Based on the testimony and evidence of the Landlord and in accordance with section 89(2)(c) of the Act, I find that Notice was served sufficiently on the tenant on July 11, 2022.

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations, or the tenancy agreement.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due by issuing a ten day notice to end tenancy which must comply with section 52 (form and content) of the Act. Upon receipt of a notice to end tenancy issued under section 46 of the Act, a tenant has 5 days to either pay the overdue rent or file an application disputing the notice as per section 46(4). If a tenant fails to comply with the 5 day deadline, section 46(5) is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice.

Section 55(2)(c) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, the Landlord served the Notice in accordance with the Act, the Notice complies with section 52 of the Act, and the tenant has not made an application to dispute the Notice. As such, I find that the Landlord has proven on a balance of probabilities that they are entitled to an order of possession.

I find that the Landlord is entitled to an order of possession pursuant to section 55(4)(a) of the Act which is effective two days after service of the order upon the Tenants.

I also grant the Landlord a monetary order requiring the payment of the outstanding rent in the amount of \$9,040.00 in accordance with section 55(4)(b) of the Act.

The Landlord continues to hold the tenant's pet and security deposits of \$1,000.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the tenant's pet and security deposit in partial satisfaction of the monetary orders.

As the Landlord was successful, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of \$8,140.00 as follows:

Item	Amount
Rent due June to December 2022 (7 x \$1,000.00)	\$7,000.00
Rent due January to February 2023 (2 x \$1,020.00)	\$2,040.00
Filing Fee	\$100.00
Pet Deposit	(-\$500.00)
Security Deposit	(-\$500.00)
Total Monetary Order	\$8,140.00

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Act.

Dated: February 13, 2023

Residential Tenancy Branch