



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding LYNCO INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord applied for dispute resolution ("Application") by way of an *ex parte* direct request proceeding under section 55(4) of the *Residential Tenancy Act* (the "Act"). The Landlord requests the following:

- 1) an Order of Possession;
- 2) a Monetary Order for unpaid rent; and
- 3) authorization to recover the filing fee for their Application from the Tenant.

During the direct request proceeding it was determined by the Adjudicator that the Landlord had not submitted a copy of the written tenancy agreement, which is a requirement of the Direct Request Process.

As a result, it was ordered that the proceeding be adjourned and reconvened as participatory hearing under section 74 of the Act.

At the hearing the Landlord was represented by an Agent who affirmed to tell the truth during proceedings and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. The teleconference commenced at 1:30 P.M. and the line was left open until 2:00 P.M. to enable the Tenant to call in, however no party attended for the Tenant.

The Agent testified that the Notice of Dispute Resolution Package ("Materials") was served on the Tenant via registered mail on February 10, 2023. A copy of Canada Post tracking number and shipping label for the Materials were provided as evidence.

Therefore, I find that pursuant to section 89 of the Act that the Landlord's Materials were sufficiently served to the Tenant. The registered mail tracking number is included on the front page of this 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 recover the filing fee for the Application from the Tenant?

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

Rent was confirmed by the Agent to be currently \$1,431.83 per month due on the first day of the month. A security deposit of \$675.00 is currently held by the Landlord. The Tenant currently occupies the rental unit.

The Agent confirmed there is a written tenancy agreement in place, but it was not provided into evidence.

Clarity regarding the name of Landlord on the Application was provided by the Agent. The owner of the rental unit is the business L.I.I. and business E.R.L. have acted as agents for the owner since their appointment in December 2015.

The Agent confirmed that the Tenant failed to pay the rent due on August 1, 2022. I was referred to a copy of the Tenant's rent ledger that had been provided as evidence in support of the partial payments and outstanding rent balance.

There was still a partial outstanding balance for rent at the end of August 2022 and the amount due for rent on September 1, 2022 was not paid by the Tenant.

As a result, the Agent served the Notice on September 9, 2022 by attaching it to the door of the rental unit. The Agent testified the Tenant communicated with them

regarding the Notice for the first time on September 18, 2022, though no rent payments have been received since serving the Notice. Attempts to negotiate a mutual vacate date from the rental unit with the Tenant were not successful.

The Agent testified that at the time the Notice was served, the Tenant owed \$1,857.50 in outstanding rent. At that time, rent was \$1,403.75 per month. I was referred to a copy of a Notice of Rent Increase form dated September 12, 2022 which increased rent from \$1403.75 to \$1,431.83 per month, effective January 1, 2023.

The Agent confirmed that the total amount of rent owed by the Tenant as of March 1, 2023 is \$10,364.24. This amount is made up of the \$1,857.50 owed when the Notice was served, rent for three months from October 2022 to December 2022 when rent was \$1403.75 per month and rent for a further three months from January 2023 to March 2023 when rent was \$1,431.83 per month.

Analysis

Section 26 of the Act requires a tenant to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept the Agent's undisputed testimony that rent due on September 1, 2022 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

I accept that the Notice was served on September 9, 2022 by attaching to the door of the rental unit, therefore would have been deemed received on September 12, 2022, the third day after it is attached in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read September 22, 2022 instead of September 19, 2022.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a). Additionally, there is

no record of the Tenant disputing the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

I find that the Tenancy ended on September 22, 2022.

The Landlord is entitled to an Order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$10,364.24 in unpaid rent to the Landlord.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

The Landlord testified they retain a security deposit of \$675.00. Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the Payment Order. A Monetary Order for the remaining amount is attached to this Decision and must be served on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$10,364.24
Filing fee	\$100.00
Less: security deposit	(\$675.00)
Total	\$9,789.24

Conclusion

The Landlord's Application is granted.

The Landlord is issued an Order of Possession.

The Landlord is issued a Monetary Order in the amount of \$9,789.24.

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: March 16, 2023

Residential Tenancy Branch