



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Danbar Property Holdings II LP C/O Metcap
Living and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on November 25, 2022 seeking an order of possession for the rental unit, compensation for rent amounts owing, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 24, 2023.

The Landlord attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter – Notice of Dispute Resolution Proceeding to Tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenants (hereinafter, the “Tenant”) with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that the document was served in a method allowed under s. 89(2) of the *Act*, and I must accept that evidence.

The Landlord provided testimony and evidence that they used registered mail for this purpose. They included a registered mail receipt in the evidence to show they sent this on December 6, 2022. This was after they received the Notice of Dispute Resolution Proceeding and other materials from the Residential Tenancy Branch on November 30, 2022. The Landlord stated the Tenant did not retrieve the registered mail, sent to the rental unit where the Tenant still resides as of the date of this hearing, and on the date the Landlord sent that material.

Based on the submissions of the Landlord, I accept they served the Tenant notice of this hearing, their Application, and evidence materials in a manner complying with s. 89(2) of the *Act*. The hearing thus proceeded in the Tenant’s absence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord submitted a copy of the residential tenancy agreement which the parties signed on April 25, 2017. The Tenant paid a security deposit of \$1,025. The set rent amount was \$2,050, and this increased to \$2,205.59 on January 1, 2022. The rent amount more recently increased to \$2,249.70 on January 1, 2023.

The Landlord submitted as evidence a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) dated November 4, 2022. The reason for the issuance of the document was the Tenant failing to pay a rent amount of \$4,632.46, due on September 1, 2022. This set the move-out date for November 23, 2022.

The Landlord provided a separate document to attest to the means of service of this document. As set out on that document, the Landlord served the document by sending a copy via registered mail to the rental unit on November 4, 2022. The Landlord provided a post office receipt showing a registered mail tracking number they used for this purpose.

There is no record of the Tenant applying to the Residential Tenancy Branch to dispute this 10-Day Notice. The 10-Day Notice itself specifies the Tenant has 5 days to either dispute or pay the rent to the Landlord. If they did not apply to dispute, the tenancy would end on the date indicated, November 23, 2022.

The Landlord presented ledger sheets showing the accumulated balance to November 3, 2022. As of that date, the balance was \$4,632.49, as indicated on the 10-Day Notice. The Tenant made a payment of \$1,500 on November 4, and then subsequently paid \$2,300 on December 5, and January 27, 2023,

The updated rent ledger provided by the Landlord for this hearing shows a total rent amount owing of \$5,707.18, with one more payment by the Tenant of \$1,880 on March 8, 2023. The

amount of \$5,707.18 also includes the \$100 Application filing fee, which the Landlord provided in the ledger for November 25, 2022.

Analysis

From the testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of rental payment and amount; by the time the Landlord issued the 10-Day Notice in November 2022, the rent amount was \$2,205.59. I accept this was the rent amount in place at that time, given that the Landlord's ledger shows previous rent payments covering this amount from the Tenant in earlier 2022.

I am not satisfied of the rent increase amount of \$2,249.70, with no proof from the Landlord that they notified the Tenant of this rent increase effective on January 1, 2023. I have reduced rent amounts owing – set out below – accordingly.

I accept the evidence before me that the Tenant failed to pay the full rent amount owing of \$4,632.46 (an amount I confirmed as accurate in the Landlord's ledger), in full, by November 14, 2022, accounting for the Landlord's mailing date of November 4, 2022, and deemed service of the 10-Day Notice to the Tenant on November 9, 2022, as per s. 90(a) of the *Act*. The Tenant did not dispute the 10-Day Notice within the five-day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10-Day Notice: November 23, 2022.

The Landlord provided testimony and evidence on the account in question and the accumulation of the rent owing amount. As presented, I find the Landlord's record of rent owing is up-to-date; however, I reduce the 2023 amount by \$132.33 to account for rent increase adjustment that was not documented. This is \$5,474.85 in total. I allow for the Landlord's amendment to their Application for the outstanding amount of rent owing that accumulated during the interim period since they made their Application to the Residential Tenancy Branch.

The *Act* s.52 provides that a notice to end tenancy must be in writing and must contain the essential elements. These are: a date and signature; the rental unit address; and the effective date. Additionally, the notice must be in the approved form when given by a landlord. On my review, the 10-Day Notice issued by the Landlord here contains these necessary elements; therefore, it complies with s. 52.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$5,474.85. As the Landlord is successful in this application, I find that the Landlord is entitled to recover the \$100 filing fee they paid for this Application.

Conclusion

I grant an Order of Possession to the Landlord effective **TWO DAYS after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 55(4) and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$5,574.85 for rent still owing, and a recovery of the filing fee for this Application. The Landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: March 27, 2023

Residential Tenancy Branch