



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with an application by the 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; and,
3. authorization to recover the filing fee for this application, pursuant to section 72.

DMH appeared at the hearing as agent for the landlord. DMH testified that they served the tenant with the Notice of Dispute Resolution Proceeding and evidence package on February 22, 2023, by registered mail. In support of this, DMH provided the Canada Post tracking number.

Based on the uncontested affirmed testimony of DMH and in accordance with section 89 and 90 of the Act, I find that the required documents were served on the tenant on February 22, 2023, and are deemed to have been received by the tenant on February 27, 2023, the fifth day after they were sent by registered mail.

DMH was given full opportunity under oath to be heard, to present evidence and to make submissions. DMH confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11

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

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided affirmed testimony that the tenancy began on July 1, 2020. Rent is \$1,117.00 due on the first day of the month. The landlord collected a security deposit of \$550.00 which they continue to hold in trust. A copy of the written tenancy agreement is submitted into evidence.

The landlord testified that they served the 10-Day Notice to End Tenancy on the tenant on February 6, 2023, by registered mail. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$2,234.00 that was due on February 1, 2023. The landlord testified that when the Notice was served, rent was outstanding for the months of January and February 2023. The landlord further testified that rent is currently outstanding for the months of January, February, and March 2023.

All pages of the Notice were served and submitted into evidence. The tenant has not disputed the Notice. The landlord testified that they have received a Notice to Vacate from the tenant indicating that the tenant will vacate the unit on March 31, 2023. The landlord seeks an order of possession in the event that the tenant does not vacate in accordance with the Notice to Vacate.

Analysis

Based on the uncontested affirmed testimony of DMH and in accordance with section 89 and 90 of the Act, I find that the 10-Day Notice was served on the tenant on February 6, 2023, and is deemed to have been received by the tenant on February 11, 2023, the fifth day after they were sent by registered mail.

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.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 21, 2023, pursuant to section 53(2) of the Act.

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. The landlord testified that they are in receipt of a Notice to Vacate from the tenant which states that the tenant will vacate the rental unit on March 31, 2023. The order of possession is granted in the event that the tenant does not vacate on March 31, 2023, in accordance with the Notice to Vacate and is effective two days after service on the tenant.

I also grant the landlord a monetary order requiring the payment of the outstanding rent in the amount of \$3,351.00 in accordance with section 55(4)(b) of the Act.

The landlord continues to hold the tenant's security deposit in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's 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 \$2,901.00 as follows:

Item	Amount
Rent due January, February, and March 2023 (3 x \$1,117.00)	\$3,351.00
Filing Fee	\$100.00
Security Deposit	(-\$550.00)
Total Monetary Order	\$2,901.00

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: March 20, 2023

Residential Tenancy Branch