



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TOP VISION REALTY 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 an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), a Monetary Order for unpaid rent under section 26 of the Act and authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act.

During the Direct Request Proceeding it was determined by the Adjudicator that the tenancy agreement (“Tenancy Agreement”) submitted into evidence by the Landlord was signed by the Tenant after the Notice was issued. Therefore, it was not clear if the Tenant was aware of the Landlord’s intention not to continue the tenancy.

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 C.C., an Agent. The Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

C.C. testified that the Notice of Dispute Resolution Package (“Materials”) for the Direct Request Proceeding were served on the Tenant via registered mail on December 19, 2022. The Materials relating to the adjourned hearing were served onto the Tenant by email on February 7, 2023. The Tenant confirmed receipt of both sets of Materials and raised no issues with service. Therefore, I find that pursuant to section 89 of the Act that the Landlord’s Materials were sufficiently served to the Tenant.

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 parties were 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.

The parties agreed that the tenancy started on September 1, 2022 and that rent is \$1,900.00 per month due on the first day of the month. A security deposit of \$950.00 was paid by the Tenant which the Landlord still retains. The Tenant vacated the rental unit on April 20, 2023.

C.C. testified that the Landlord took ownership of the rental unit on September 1, 2022. The Tenant occupied the rental unit prior to this date and had a tenancy agreement with the previous landlord. The Tenancy Agreement was given to the Tenant to confirm the change in ownership but was not ultimately signed by the Tenant until November 8, 2022 as there was a delay in them signing the document.

C.C. confirmed the Notice was sent to the Tenant via email on October 24, 2022 after rent due on September 1, 2022 and October 1, 2022 went unpaid. I was referred to a ledger that had been entered into evidence by the Landlord which showed partial payments made by the Tenant throughout November 2022. I was also referred to receipts for the payments that had been entered into evidence by the Landlord that indicated to the Tenant the funds were received for "use and occupancy only".

C.C. stated that as of April 1, 2023 the total amount of outstanding rent owed by the Tenant was \$9,500.00. As the Tenant had vacated the rental unit already, an Order of Possession was no longer sought by the Landlord.

The Tenant stated that they did not oppose the submissions of the Landlord's Agent and acknowledged that a change in their personal circumstances meant they had issues making rent payments.

The Tenant confirmed receipt of the Notice and had no issues with service. They agreed that the total amount of outstanding rent was \$9,500.00.

Analysis

Section 26 of the Act requires tenants 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.

Based on the testimony from both parties, I find that rent due 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. As the Tenant confirmed receipt of the Notice, I find it was sufficiently served in accordance with section 71(2)(c) of the Act.

Though the Tenancy Agreement was signed by the Tenant until after the Notice was issued, I find this was due to a delay on the Tenant's part and the Landlord did not waive the Notice either explicitly or implicitly. Furthermore, the Landlord issued receipts for "use and occupancy only" and has invested resources in pursuing an Order of Possession and Monetary Order on the basis of the Notice having submitted their Application on December 15, 2022.

The Notice was served on October 24, 2022 by email, therefore would have been deemed received on October 27, 2022, the third day after it is sent in accordance with section 44 of the *Residential Tenancy Regulations*. 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 November 6, 2022 instead of November 4, 2022.

Based on the testimony from both parties, I find 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.

The Landlord's Agent confirmed an Order of Possession is long longer required as the Tenant has vacated the rental unit. Therefore, I shall not be issuing an Order of Possession pursuant to section 55(2)(b) of the Act.

Since the Application relates to a notice to end tenancy under section 46 of the Act, 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 \$9,500.00 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.

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. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The Landlord's Application is granted.

The Landlord is issued a **Monetary Order**.

The Monetary Order is summarized below.

Item	Amount
Unpaid rent	\$9,500.00
Filing fee	\$100.00
Less: security deposit	(\$950.00)
Total	\$8,650.00

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: April 21, 2023