



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, OPN, MNRL-S, FFL

Introduction

The Landlord applied for dispute resolution (“Application”) and seeks the following:

- an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”);
- an Order of Possession following the Tenant giving written notice to end the tenancy under section 55 of the Act;
- a Monetary Order for unpaid rent under section 26 of the Act;
- authorization to retain the security deposit under section 38 of the Act; and
- authorization to recover the filing fee from the Tenant under section 72 of the Act.

The Applicant Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 9:45 A.M. to enable the Respondent Tenant to connect with this teleconference hearing scheduled for 9:30 A.M., the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

The Landlord testified they served the Notice of Dispute Resolution Package ("Materials") on the Tenants in person on March 22, 2023. A Proof of Service (RTB-55) document signed by the Landlord and a witness confirming service of the Materials on the Tenant was entered into evidence by the Landlord. I find that pursuant to section 89 of the Act, 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 retain the security deposit?
4. 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.

The Landlord confirmed the following details regarding the tenancy:

- The Tenant began to occupy the rental unit on October 2, 2022.
- Rent of \$750.00 per month is due on the first day of the month.
- A security deposit of \$350.00 was paid by the Tenant, which the Landlord still retains. No pet damage deposit was paid by the Tenant.
- There is no written tenancy agreement. The agreement was verbal.
- The Tenant still occupies the rental unit.

The Landlord testified as follows. They reduced rent to \$700.00 for October 2022 only as the Tenant did not occupy the rental unit for the full month, however only \$250.00 was paid by the Tenant. Rent due November 1, 2022 went unpaid and the Landlord followed up with the Tenant regarding this. The Tenant paid \$725.00 on November 28, 2022. Rent due December 1, 2022 and January 1, 2023 went unpaid.

The Notice was served to the Tenant on January 7, 2023 by attaching to the door of the rental unit. A copy of the Notice was entered into evidence by the Landlord. The Notice is signed January 7, 2023 and provides an effective date of January 20, 2023.

The Tenant made promises to pay rent but never did. No payments have been made by the Tenant since November 28, 2022. As of April 1, 2023, the total amount of unpaid rent owed by the Tenant to the Landlord is \$4,225.00.

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.

I accept the Landlord's undisputed testimony that rent due January 1, 2023 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.

The Notice was served on January 7, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on January 10, 2023, the third day after it is served in accordance with section 90 of the Act. I find the effective date of January 20, 2023 provided on the Notice to be correct.

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. I find that the Tenancy ended on January 20, 2023 in accordance with the Notice. As the Landlord has been granted an Order of Possession, the request for an Order of Possession following the Tenant giving written notice to end the tenancy under section 55 is now moot and I will not be considering it.

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 \$4,225.00 in unpaid rent to the Landlord.

As the Landlord has been successful in their Application, I authorize 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.

Conclusion

The Application is granted.

The Landlord is issued an Order of Possession. 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.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision. 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). The Order is summarized below.

Item	Amount
Unpaid rent	\$4,225.00
Filing fee	\$100.00
Less: security deposit	(\$350.00)
Total	\$3,975.00

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 27, 2023

Residential Tenancy Branch