



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR MNRL FFL

Introduction

This dispute related to a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 28, 2022 (10 Day Notice),
2. \$8,092.90 for unpaid rent and filing fee.

The landlord attended the participatory hearing and was affirmed. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 13, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The landlord testified that the Hearing Package was served by registered mail on February 2, 2023. The registered mail tracking number is RN 690 416 805 CA. According to the online Canada Post registered mail tracking website, the package was mailed to the tenant on February 2, 2023 and was unclaimed by the tenant and eventually returned to the sender on April 13, 2023. Section 90 of the Act states that document served by registered mail are deemed served 5 days after they are mailed. I find the tenant was deemed served as of February 7, 2023 as a result.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present.

Preliminary and Procedural Matters

The landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The landlord did not have an email address for the tenant. As a result, the decision will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlord could not recall if a signed tenancy agreement existed. The landlord testified that the rent last year was \$1,332.15 and was increased to \$1,358.79 this year and was always due on the first day of each month.

The landlord testified that the 10 Day Notice was served posting on the tenant's door on November 28, 2022. The 10 Day Notice indicates that \$7,992.90 was owed in rent as of November 28, 2022. The landlord stated that the tenant continues to occupy the rental unit and now also owes \$1,358.79 for January, February, March and April of 2023, which adds another \$5,435.16 to the amount owing. The total rent owing as of the date of the hearing is \$13,428.06 before the filing fee of \$100.

Although the effective vacancy date listed on the 10 Day Notice was not listed, I amend the 10 Day Notice pursuant to section 68(1) of the Act as I find the tenant knew, or should have known, that 10 days following November 28, 2022, would be the end of tenancy unless rent was paid in full. The tenant did not dispute the 10 Day Notice and did not pay the rent owed.

The landlord is seeking an order of possession, a monetary order for unpaid rent, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlord's undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. Pursuant to section 90 of the Act, I find the tenant was deemed served with the 10 Day Notice 3 days after it was posted on November 28, 2022, which would be December 1, 2022. The effective vacancy date of the 10 Day Notice I have amended to December 11, 2022, which has passed. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was December 11, 2022. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on December 11, 2022 and that the tenant has overheld the rental unit since that date.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the undisputed testimony of the agent that the tenant owes rent as claimed in the amount of **\$13,428.06**. I find the tenant breached section 26 of the Act which requires the tenant to pay rent on the first day of each month.

In addition, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100**, pursuant to section 72 of the Act. This brings the total owing by the tenant to the landlord in the amount of **\$13,528.06**.

I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$13,528.06**.

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on December 11, 2022.

The landlord has been granted a monetary order in the amount of \$13,528.06. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenant that they can be held liable for all costs related to the enforcement of both orders. The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision only via email. The tenant has been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 20, 2023

Residential Tenancy Branch