



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on December 22, 2022 seeking an order of possession for the rental unit, to recover the money for unpaid rent, 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 April 27, 2023.

In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions. The Landlord attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve 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 evidence that they used registered mail for this purpose. They provided a registered mail tracking number and stated the item was not retrieved by either of the Tenants. They confirmed the Tenants still live in the rental unit, and that the package containing the Notice of Dispute Resolution Proceeding, and the Landlord’s evidence, was refused by each Tenant. I accept the evidence and so find the Tenants refused to retrieve the registered mail.

Based on the submissions of the Landlord, I accept they served each of the Tenants notice of this hearing and the Notice of Dispute Resolution Proceeding in a manner complying with

s. 89(2)(b) of the *Act*. The hearing proceeded in the Tenants' absence. I deem the documents received on January 3, 2023, as per s. 90(a) of the *Act*.

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 reimbursement of the Application filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord explained there was no tenancy agreement document in this tenancy. As indicated on their Application, the tenancy started on January 1, 2022. The rent amount of \$1,750 did not increase since the start of the tenancy.

The Landlord applied for a tenancy agreement pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). They presented that they served this to the Tenant on December 10, 2022 via registered mail. They stated in the hearing that this piece of registered mail was not returned by the Tenants. The Landlord provided a registered mail receipt with tracking number to show proof of this method of service.

The 10-Day Notice states that the Tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, December 19, 2022.

The reason for the Landlord serving the 10-Day Notice was accumulated unpaid rent in the preceding months. As indicated on page 2 of the 10-Day Notice, this was \$5,250. A separate ledger showing no payments received for each of the months of October, November, and December 2022 confirms this basic amount, at \$1,750 owing for each of those months.

The Landlord applied for an Order of Possession pursuant to the 10-Day Notice, on the basis of the Tenant not paying the rent balance, and not applying for dispute resolution against the 10-Day Notice.

The Landlord amended their monetary claim in the hearing to account for subsequent months of rent. The Tenant paid no rent in January through to April 2023, for an additional \$7,000 owing. This brings the total amount of rent owing, for 7 months, to \$12,250.

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. The Tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by December 20, 2022, within the five days granted under s. 46(4) of the *Act*, and accounting for a 5-day deemed service period as per s. 90(a) of the *Act*. The Tenant did not dispute the 10-Day Notice within that 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, December 19, 2022.

The Landlord provided testimony and evidence on the account in question and the accumulation of the amount. As presented, I find the Landlord's claimed amount is \$12,250. By Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I accept the Landlord's amendment to their Application. The Tenant did not attend the hearing; therefore, there is no evidence contrary to that of the Landlord on this exact amount owing.

The hearing itself was held on April 27, 2023, and the Landlord stated that the Tenant was still living in the rental unit on that date. The Tenant has been overholding since the effective date of the end of tenancy, December 19, 2022.

I find the Landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$12,250.

The Landlord was successful in this Application; therefore, I grant reimbursement to them of the \$100 Application filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$12,350 for rent owed for October 2022 through to April 2023 and the fee. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: April 27, 2023

Residential Tenancy Branch