



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Application for Dispute Resolution by Direct Request (the Application) was filed by the Landlord under the *Residential Tenancy Act* (the Act), on March 6, 2023, seeking:

- An order of possession because the Tenant was served with a 10 Day Notice to end Tenancy for Unpaid rent or Utilities (10 Day Notice) and failed to either pay the rent owed or dispute the notice within 5 days after receiving it;
- Recovery of unpaid rent; and
- Recovery of the filing fee.

On March 22, 2023, an interim decision was made. In that interim decision the adjudicator ordered that because a copy of the tenancy agreement was not included with the Landlord's Application, they could not make a decision based only on the Application and documentary evidence before them. They therefore ordered that the hearing be convened by teleconference. The hearing was convened by teleconference at 11:00 am on May 1, 2023, and was attended by two Agents for the Landlord (the Agents), both of whom provided affirmed testimony. No one attended on behalf of the Tenant. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Agents were advised that inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agents were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Agents were also advised that personal recordings of the proceedings were prohibited

under the Residential Tenancy Branch Rules of Procedure (Rules of Procedure) and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon at the hearing by the applicant(s). In the interim decision the adjudicator deemed the Tenant served with the Application and documentary evidence on January 30, 2023. As the Tenant did not attend the hearing, I confirmed service of the interim decision and the notice of hearing for the teleconference as explained below.

The Agents testified that the Notice of Dispute Resolution Proceeding (NODRP), which includes the Application and the Notice of Hearing for the teleconference, was sent to the Tenant at the rental unit by registered mail on March 24, 2023, the day after it became available to them from the Residential Tenancy Branch (Branch). The Agents provided a copy of the registered mail receipt with the tracking number. The Agents stated that although they do not know if the Tenant is still residing in the rental unit or not, as they have not seen them recently and do not appear to be picking up their mail, the rental unit still looks occupied as it is full of the Tenant's possessions. As a result, I deem the Tenant served on March 29, 2023, pursuant to sections 89(1)(c) and 90(a) of the Act.

Branch records indicate that the NODRP was sent to the Landlord by email, as per their request, on March 23, 2023. As I am satisfied that the NODRP was mailed to the Tenant the following day, the Landlord complied with section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Agents were able to attend the hearing using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Based on the above, I commenced the hearing as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

I refer only to the relevant and determinative facts, evidence, and issues in this decision. At the request of the Agents, a copy of the decision and any orders issued in favor of the Landlord will be sent to them by email.

Preliminary Matters

The Agents stated that the Tenant now owes \$6,828.36 in outstanding rent for the period up to and including April 30, 2023, and sought recovery of this updated amount. The Application was amended accordingly pursuant to rule 4.2 of the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession pursuant to sections 46 and 55 of the Act?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The Agents stated that the Landlord does not have a written tenancy agreement with the Tenant, as they purchased the property from the previous owner and this tenancy was already in place. The Agents stated that as of January 1, 2023, rent increased to \$946.80 from \$928.24. Notice of rent Increase documents were submitted. The Agents testified that the 10 Day Notice was posted to the door of the rental unit on January 4, 2023. A proof of service document was also submitted.

The 10 Day Notice is dated January 4, 2023, has an effective date of January 17, 2023, and indicates that as of January 1, 2023, the Tenant owed \$3,712.96 in outstanding rent. The Agents stated that the Tenant did not dispute the 10 Day Notice and has only made one rent payment of \$946.80 on March 1, 2023, since the 10 Day Notice was served. The Agents therefore sought an order of possession for the rental unit as soon as possible, and recovery of the \$6,828.36 in outstanding rent owed up to and including April 30, 2023. The Agents stated that the Landlord currently holds the Tenant's \$390.00 security deposit, and sought authorization to withhold it in partial repayment of the above noted amount owed. They also sought recovery of the \$100.00 filing fee.

Although the teleconference remained open for the 22-minute duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for consideration.

Analysis

Section 46 of the Act outlines the grounds on which a landlord may issue a 10 Day Notice. Section 46(4) of the Act states that a tenant must either pay the outstanding rent amount shown on the 10 Day Notice or dispute the notice by making an application for dispute resolution, within 5 days after the date the tenant receives the notice. Section 46(5) of the Act states that if a tenant does neither of the above, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Based on the affirmed and uncontested testimony of the Agents, and the documentary evidence before me, I am satisfied that the 10 Day Notice was posted to the door of the rental unit on January 4, 2023, and I deem it served on January 7, 2023, pursuant to section 90(c) of the Act. I am also satisfied that the Tenant neither paid the rent amount shown on the 10 Day Notice, nor filed an Application for Dispute Resolution with the Branch seeking its cancellation. I therefore find that they were conclusively presumed on January 12, 2023, to have accepted the 10 Day Notice, and required to vacate the rental unit on January 17, 2023, the effective date of the 10 Day Notice.

Pursuant to section 55(2)(b) of the Act, and as the 10 Day Notice complies with section 52 of the Act, I therefore grant the Landlord an order of possession effective two days after service on the Tenant. Pursuant to section 26 of the Act, I also grant the Landlord recovery of \$6,828.36 in outstanding rent up to and including April 30, 2023. If the Tenant overheld the rental unit past that date without paying rent, the Landlord may seek compensation for overholding on a per diem basis under a subsequent Application for Dispute Resolution, should they wish to do so.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee. Pursuant to section 72(2)(b) of the Act, the Landlord is entitled to retain the Tenant's \$390.00 security deposit in recovery of the amounts owed. Pursuant to section 67 of the Act, the Landlord is granted a \$6,538.36 monetary order for the remaining balance owed by the Tenant to the Landlord, and I order the Tenant to pay this amount.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the Landlord effective **two days after service** on the Tenant. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 72(2)(b) of the Act, the Landlord is entitled to retain the Tenant's \$390.00 security deposit.

Pursuant to section 67 of the Act, I grant a \$6,538.36 monetary order to the Landlord. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Small Claims Court of British Columbia and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: May 3, 2023

Residential Tenancy Branch