



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Kare Property Management Group
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. an Order of Possession, pursuant to section 55;
2. a Monetary Order for unpaid rent, pursuant to section 67; and,
3. authorization to recover the filing fee paid for this application, pursuant to section 72.

EV appeared as agent for the landlord.

EV testified that they served the tenants with the Notice of Reconvened Hearing, the interim decision, and all other required documents on March 25, 2023, by registered mail. In support of this, EV provided a Proof of Service document containing a Canada Post Tracking Number.

Based on the uncontested affirmed testimony of EV and in accordance with section 88, 89 and 90 of the Act, I find that the required documents were served on the tenants on March 25, 2023, and are deemed to have been received by the tenants on March 30, 2023, the fifth day after they were sent by registered mail.

EV confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

The tenants did not appear at the hearing. The hearing proceeded in the tenant's absence pursuant to Rule of Procedure 7.3.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recovery of the filing fee from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of EV not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

EV provided affirmed testimony that the tenancy began on October 5, 2022. Rent is \$1,075.00 due on the first day of the month. The landlord collected a security deposit of \$637.50 which they continue to hold in trust. A copy of the written Tenancy Agreement is submitted into evidence. EV testified that JD is the tenant who signed the Tenancy Agreement.

EV testified that they served the 10-Day Notice on the tenants on January 10, 2023, by posting it to the door of the rental unit. In support of this, EV submitted Proof of Service document indicating the same. Page two of the Notice indicates that the tenants did not pay rent in the amount of \$2,761.00 that was due on January 1, 2023.

EV drew my attention to the Direct Request Worksheet which is submitted into evidence and indicates that at the time the 10-Day Notice was issued rent was outstanding in the amount of \$611.00 for the month of November 2022 and \$1,075.00 for the months of both December 2022 and January 2023 amounting to a total rent arrears of \$2,761.00.

EV further testified that since the 10-Day Notice was issued, the tenants made one payment of \$1,000.00 toward the rent arrears in March 2023; however, the tenants have not paid any rent for February, March, April, or May 2023.

All pages of the Notice were served and submitted into evidence. The tenants have not disputed the Notice. The landlord testified that the tenants are still residing in the unit. The landlord is seeking an Order of Possession and Monetary Order for \$6,061.00 in unpaid rent.

Analysis

This matter was adjourned to a participatory hearing because an Adjudicator was unable to determine which tenant is responsible for paying rent based on the Tenancy Agreement signed by only one tenant. However, the Tenancy Agreement lists both JD and MM as tenants. On that basis, and regardless of which tenant signed the Tenancy Agreement, I find that they are both correctly named as tenants for the purpose of this application.

Based on the uncontested affirmed testimony of the landlord and in accordance with section 89 and 90 of the Act, I find that the 10-Day Notice was served on the tenants on January 10, 2023, and is deemed to have been received by the tenants on January 13, 2023, the third day after it was posted to the door of the rental unit.

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, regulations, or the tenancy agreement.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due by issuing a 10-Day notice to end tenancy which must comply with section 52 (form and content) of the Act. Upon receipt of a notice to end tenancy issued under section 46 of the Act, a tenant has 5 days to either pay the overdue rent or file an application disputing the notice as per section 46(4). If a tenant fails to comply with the requirements of the notice, section 46(5) is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 23, 2023, pursuant to section 53(2) of the Act.

Section 55(2)(c) of the Act permits a landlord to request an Order of Possession when a notice to end the tenancy has been given by the landlord, the tenants has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, the landlord served the Notice in accordance with the Act, the Notice complies with section 52 of the Act, and the tenant has not made an application to

dispute the Notice. As such, I find that the landlord has proven on a balance of probabilities that they are entitled to an Order of Possession.

I find that the landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the tenants. The tenants have two days to vacate the rental unit from the date of service or deemed service.

I also grant the landlord a Monetary Order requiring the payment of the outstanding rent. EV testified that the tenants have not paid rent for the month of May. However, as this hearing took place on May 1st, the day rent for May 2023 is due, I find I am unable to determine that rent is outstanding for the month of May 2023 and therefore the landlord is not entitled to compensation for outstanding rent for the month of May 2023.

I find that the landlord is entitled to a Monetary Order in the amount of \$4,986.00 for outstanding rent in accordance with section 55(4)(b) of the Act.

The landlord continues to hold the tenant's security deposit in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the Monetary Order.

As the landlord was successful in this application, I find that they are entitled to recover the filing fee paid for this application from the tenants.

Conclusion

The landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlord's favour in the amount of \$4,448.50 as follows:

Item	Amount
Rent outstanding from November 2022	\$611.00
Rent due December, January, February, March and April 2023 (5 x \$1,075.00)	\$5,375.00

Filing Fee	\$100.00
Tenant Payment March 2023	\$-1,000.00
Security Deposit	-\$637.50
Total Monetary Order	\$4,448.50

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 02, 2023

Residential Tenancy Branch