



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MACKENZIE RESTAURANT 1961
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated January 4, 2023 ("10 Day Notice"); for a monetary order for unpaid rent of \$8,631.00; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, G.C. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing, the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on January 24, 2023. The Agent provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted

the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and he confirmed it in the hearing. The Landlord does not have the Tenant's email address; therefore, I will send a copy of the Decision to the Tenant at the rental unit address. The Agent also confirmed his understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner. In addition, the Agent said they would provide the Tenant with a copy of the Decision, as well as serving him with any Orders that are granted to the Landlord.

At the outset of the hearing, I advised the Agent that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent affirmed that he was not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of their Application filing fee?

Background and Evidence

The Agent confirmed that the tenancy began on September 15, 2011, with a monthly rent of \$980.00, due on the first day of each month. He said that the current rent is \$1,233.00. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$490.00, and a pet damage deposit of \$300.00, and that the Landlord still holds both amounts in full.

The Agent submitted a copy of the 10 Day Notice, and in the hearing, he confirmed that the 10 Day Notice was signed and dated January 4, 2023, and that it has the rental unit address. It was served via registered mail on January 4, 2023, with an effective vacancy date of January 15, 2023, which is automatically corrected by section 53 of the Act to be January 19, 2023. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$8,630.00 in rent owed to the Landlord on January 1, 2023.

The Agent said that the Tenant has not paid any rent since June 2022, and therefore, that he currently owes the Landlord 11 months' of rent, which amounts to **\$13,563.00**.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
July 1/22	\$1,233.00	\$0.00	\$1,233.00
Aug 1/22	\$1,233.00	\$0.00	\$2,466.00
Sep 1/22	\$1,233.00	\$0.00	\$3,699.00
Oct 1/22	\$1,233.00	\$0.00	\$4,932.00
Nov 1/22	\$1,233.00	\$0.00	\$6,165.00
Dec 1/22	\$1,233.00	\$0.00	\$7,398.00
Jan 1/23	\$1,233.00	\$0.00	\$8,631.00
Feb 1/23	\$1,233.00	\$0.00	\$9,864.00
March 1/23	\$1,233.00	\$0.00	\$11,097.00
April 1/23	\$1,233.00	\$0.00	\$12,330.00
May 1/23	\$1,233.00	\$0.00	\$13,563.00
	TOTAL OWING		\$13,563.00

There is no evidence before me that the Tenant disputed the 10 Day Notice or submitted any evidence regarding the Landlord's Application before me.

Analysis

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

#1 ORDER OF POSSESSION

Section 46 (5) of the Act states that if a tenant who has received a 10 Day Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is 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.

As there is no evidence before me that the Tenant disputed the 10 Day Notice, I find that he is conclusively presumed under section 46 (5) of the Act to have accepted the

10 Day Notice, and I find that the tenancy, therefore, ended on January 19, 2023. As a result, I find that the Tenant is overholding the rental unit and that the Landlord is therefore entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act. As the corrected effective date has passed and the Agent testified that rent for July 2022 through May 2023 has not been paid, the **Order of Possession** will therefore be **effective two days after service** on the Tenant.

#2 UNPAID RENT OWED TO THE LANDLORD

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Based on the evidence before me on a balance of probabilities, I find that the Landlord is successful in their Application, as I find that the Tenant breached section 26 of the Act in not paying rent for the last eleven months. I award the Landlord with **\$13,563.00** in unpaid rent from the Tenant pursuant to sections 26 and 67 of the Act.

Given the Landlord's success in this Application, I also award them with recovery of their **\$100.00** Application filing fee, pursuant to section 72 of the Act. This makes a total award of **\$13,663.00**.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$490.00** security deposit and **\$300.00** pet damage deposit in partial satisfaction of the Landlord's monetary awards. I, therefore, authorize the Landlord to retain the Tenant's security and pet damage deposits, pursuant to section 72 of the Act.

Consequently, I grant the Landlord a **Monetary Order** of **\$12,873.00** from the Tenant pursuant to sections 62 and 67 of the Act.

Conclusion

The Landlord is successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlord is awarded an Order of Possession and a Monetary Award of **\$13,663.00**, including recovery of their \$100.00 Application filing fee.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** for the rental unit, **effective two days after deemed service** on the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to keep the Tenant's security and pet damage deposits totalling **\$790.00** in partial satisfaction of the Landlord's Monetary Awards. I grant the Landlord a **Monetary Order** under section 67 of the Act from the Tenant in the amount of **\$12,873.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: May 12, 2023

Residential Tenancy Branch