



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding METRO VANCOUVER HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

The Landlord applied for dispute resolution (“Application”) and seeks the following:

- an Order of Possession on an undisputed One Month Notice to End Tenancy for Cause (the “Notice”) under section 55(2)(b) of the Residential Tenancy Act (the “Act”);
- a Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- to retain the security deposit under section 38 of the Act; and
- to recover the cost of filing fee from the Tenants under section 72 of the Act

Parties appeared for both the Landlord and the Tenants. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the “Materials”) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?
3. Is the Landlord entitled to retain the security deposit?
4. Is the Landlord entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on April 1, 2022.
- Rent is \$1912.00 per month due on the first day of the month.
- A security deposit of \$937.50 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants still occupy the rental unit.

The Landlord's Agent testified as follows. The Notice was issued to the Tenants on October 13, 2022. The reasons stated on the Notice were that the Tenants were repeatedly late paying rent and that they had breached a material term of the tenancy agreement that was not corrected in a reasonable time after written notice to do so.

The Notice was issued because the Tenants had been late paying rent for every month of the tenancy, with the exception of the first month. Written warnings had been issued to them asking them to pay on time.

There was also unpaid rent of \$9,449.00 owed by the Tenants as they had not paid rent from January 2023 to May 2023.

A copy of the Notice was entered into evidence by the Landlord. It is signed October 13, 2022 and provides for an effective date of November 30, 2022. The reasons for ending the tenancy and details of cause described in the Landlord's Agent's testimony are echoed on the Notice. The Application indicates that the Notice was served on the Tenants on October 13, 2022 by leaving a copy in the mailbox of the rental unit. A witnessed Proof of Service form corroborates this.

The Tenant did not dispute the Landlord's Agent's testimony. They agreed with the amount of outstanding rent and with the months that rent was paid late put forward by the Landlord's Agent. They said they were having a difficult time financially and were looking at obtaining loans and taking funds from savings to pay the rental arrears.

Analysis

Order of Possession

Section 47 of the Act permits a landlord to end a tenancy by issuing a Notice to End Tenancy for Cause in the approved form. Section 47(4) of the Act confirms that a tenant may dispute a Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice.

Section 47(5) states that if a tenant who has received a Notice to End Tenancy for Cause and does not make an application for dispute resolution within 10 days of receipt of the notice, 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 undisputed testimony of the Landlord's Agent and the evidence before me, I find that The Notice was issued to the Tenants on October 13, 2022 by leaving a copy in the mailbox of the rental unit. Therefore, it would be deemed received on October 16, 2022, the third day after it is left in the mailbox in accordance with section 90(d) of the Act. There is no record of the Tenants disputing the Notice. Therefore, under section 47(5) of the Act, the Tenants are presumed to have accepted the Notice. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. The Tenants have two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on November 30, 2022 in accordance with the Notice.

Monetary Order

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

Based on the undisputed testimony of the Landlord's Agent I find that the Tenants failed to pay rent from January 2023 to May 2023. The Tenant agreed that the amount of rental arrears stated by the Landlord's Agent of \$9,449.00 was accurate and put forward no reasons as to why they had a right to withhold rent.

Given the above, I find the Landlord is entitled to an order for unpaid rent under section 67 of the Act. Therefore, the Tenants are ordered to pay \$9,449.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order.

As the Landlord has been successful in their Application, I order the Tenants to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

Conclusion

The Application is granted.

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenants. If the Tenants do not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$9,449.00
Filing fee	\$100.00
Less: security deposit	(\$937.50)
Total	\$8,611.50

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 19, 2023

Residential Tenancy Branch