



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNR-DR**

Introduction

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

- for a monetary order for unpaid rent pursuant to section 67 of the Act

Landlord GN appeared with translator TN. The tenant did not appear. The landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The landlord was reminded to not record the hearing pursuant to Rule of Procedure 6.11. The landlord was affirmed.

The landlord GN testified that she served the 10 Day Notice dated January 5, 2023 on the tenant by posting it to the door of the rental unit on January 13, 2023. The landlords provided RTB 34 form in evidence as proof of service. Based on sections 88 and 90 of the Act the tenant is deemed to be served on January 16, 2023. The effective date of the 10 Day Notice is changed to January 26, 2023, based on section 53 of the Act.

The landlord GN testified that she served the dispute notice and evidence on the tenant by registered mail on January 26, 2023. The landlord provided a Canada Post receipt in evidence as proof of service. I find that the tenant is deemed served on January 31, 2023, based on sections 88, 89, and 90 of the Act.

Preliminary Issue

The landlords testified that they also wished an order of possession for the rental unit. They did not list this specific for of relief in their application. However the request is listed as follows in the Dispute Notice served on the tenant:

I issued a 10 Day Notice to End Tenancy and I want a monetary order in addition to an order of possession for rent not paid in the required time

RTB Rules of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

I find that it is appropriate to amend the landlords' claim to include a request for an order of possession. Based on the information provided to the tenant in the dispute notice, it is reasonable to believe that the tenant was aware that the landlord was also seeking an order of possession.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for compensation for unpaid rent?

Background and Evidence

There is no written tenancy agreement. The landlord stated that she believed the tenancy commenced on September 15, 2020. Rent is \$1,700 per month due on the first of the month. The landlord did not take a security deposit. The tenant still occupies the rental unit.

The 10 Day Notice dated January 5, 2023, is in evidence.

The landlord testified that the tenant has not paid rent for the months of October, November and December of 2022, or January 2023. On that basis she served the 10

Day Notice. The landlord further testified that the tenant has not paid rent for February, March, April, and May 2023. The current total amount of rent owed by the tenant is \$13,600.00. The landlord is seeking a monetary order for that amount.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The 10 Day Notice meets the form and content requirements of section 52 of the Act, and I find that the 10 Day Notice is valid. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the 10 Day Notice meets the form and content requirements of section 52 of the Act and if I uphold the landlord’s notice. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective two days from the date it is served on the tenant.

Section 55(1.1) of the Act requires me to issue a monetary order for unpaid rent if the 10 Day Notice complies with section 52 of the Act and if I uphold the 10 Day Notice. Both requirements are satisfied, and the landlord is therefore entitled to a monetary order for unpaid rent in the amount of \$13,600.00 based on Section 55(1.1) of the Act.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$13,600.00 for unpaid rent. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 16, 2023