



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlords applied for dispute resolution (“Application”) by way of an *ex parte* Direct Request Proceeding under section 55(4) of the *Residential Tenancy Act* (the “Act”). The Landlords request an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), a Monetary Order for unpaid rent under sections 26 and 67 of the Act and authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act.

During the direct request proceeding it was determined by the Adjudicator that the tenancy agreement was not signed by the Tenant, which is a requirement of the Direct Request Proceeding procedure. As a result, it was ordered that the proceeding be adjourned and reconvened as participatory hearing under section 74 of the Act.

The Landlords attended the hearing who both affirmed to tell the truth during proceedings and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. The teleconference commenced at 9:30 A.M. and the line was left open until 9:54 A.M. to enable the Tenant to call in, however no party attended for the Tenant.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a 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 hearing in the absence of that party or dismiss the application with or without leave to reapply.

The Landlords testified the Notice of Dispute Resolution Package ("Materials") for the Direct Request Proceeding Application were served on the Tenant via registered mail on March 10, 2023 and that the Materials for the adjourned hearing were served on the Tenant on April 15, 2023 via registered mail. Therefore, I find that pursuant to section 89 of the Act that the Landlords' Materials were sufficiently served to the Tenant. The registered mail tracking numbers are displayed on the front page of this Decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to a Monetary Order for unpaid rent?
3. Are the Landlords entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The attending 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 Landlords confirmed the following regarding the tenancy:

- The tenancy started on May 20, 2022.
- Monthly rent is \$2,200.00 due on the nineteenth day of the month.
- A security deposit of \$1,100.00 and a pet damage deposit of \$300.00 were paid by the Tenant, which the Landlords still retain.
- The Tenant no longer occupies the rental unit, though they have sublet the unit without their permission and this subtenant occupies the unit.
- There is a written tenancy agreement which was entered into evidence by the Landlords.

The Landlords testified as follows. The Tenant took occupancy of the rental unit in May 2022 and paid the security deposit, pet damage deposit and rent for the first month of the tenancy by e-transfer. The tenancy agreement was sent to the Tenant via email to sign but a signed copy was not received in return. The Landlords asked the Tenant about the signed tenancy agreement a few times, but they did not get a reply. As the Tenant was on time paying rent at that time, they thought the Tenant was reliable and did not pursue the matter any further.

Rent for July 2022 was paid by another party. As the Tenant had stated they would be living in the rental unit with their partner, the Landlords thought it was the Tenant's partner who was paying them.

Rent payments from August 2022 onwards were frequently late and short of the full amount due. The Landlords followed up with the Tenant via text about this and the arrears were eventually cleared. However, rent due on October 19, 2022 was not paid at all. The Landlords again sent a text message to the Tenant who said they had ongoing issues and he could not pay rent.

Rent due November 19, 2022 also went unpaid and a 10 Day Notice to End Tenancy for Unpaid Rent was served via email. The Landlords later found out that as they did not have a written agreement to serve documents via email that this was not a valid method of service.

The Landlords arranged to meet the Tenant and inspect the rental unit in January 2023. The Tenant said his partner would be there to meet them instead of him. When they attended the rental unit, the Landlords found an occupant who they were not aware of. The occupant said they had been paying rent to the Tenant and they were living alone.

The Notice was served to the Tenant February 1, 2023 via registered mail. A copy of the Notice was entered into evidence by the Landlords. It is signed January 30, 2023, has an effective date of February 9, 2023 and provides an outstanding amount of rent of \$8,800.00 as of January 19, 2023.

The Landlords confirmed the amount of outstanding rent listed on the Notice is made up of rent due on October 19, 2022, November 19, 2022, December 19, 2022 and January 19, 2023. They also testified that no rent had been paid by the Tenant since the Notice was issued and they seek a further three month's rent bringing the total amount sought

to \$15,400.00. They also seek an Order of Possession as the Tenant had attended the rental unit at some point in April 2023 and changed the locks.

Analysis

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. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Though the tenancy agreement was not signed, the Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Based on the Landlords' undisputed testimony which confirmed a security deposit and a pet damage deposit were paid, and that rent was paid also by the Tenant, I find that there is a tenancy agreement in place between the Landlords and the Tenant.

I accept the Landlords' undisputed testimony that rent due October 19, 2022 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on February 1, 2023 via registered mail, therefore would have been deemed received on February 6, the fifth day after it is mailed in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read February 16, 2023 instead of February 9, 2023.

I accept the Landlords' undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a). Additionally, there is no record of the Tenant disputing the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlords are granted an Order of Possession pursuant to section 55(2)(b) of the Act. I find that the Tenancy ended on February 16, 2023 in accordance with the Notice.

The Landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$15,400.00 in unpaid rent to the Landlords.

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

Under section 38(4)(b) of the Act, the Landlords are ordered to retain the security deposit and pet damage deposit in partial satisfaction of the payment order.

Conclusion

The Application is granted.

The Landlords are issued an **Order of Possession**. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlords are issued a **Monetary Order**. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlords' obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$15,400.00
Filing fee	\$100.00
Less: security deposit and pet damage deposit	(\$1,400.00)
Total	\$14,100.00

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 15, 2023

Residential Tenancy Branch