



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR / OPR-DR, MNR-DR, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties, which were crossed to be heard simultaneously.

The Tenant seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the Act)

The Landlords request the following:

- an Order of Possession after issuing the Notice under section 55(2)(b) of the Act;
- 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

The Landlords called into this teleconference at the date and time set for the hearing of this matter. The Landlord BC2 confirmed they would represent the Landlords and BC and SKC would be observing only. BC2 affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 2:01 PM to enable the Tenant to connect with this teleconference hearing scheduled for 1:30 PM, the Tenant did not attend.

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.

BC2 testified they served the Notice of Dispute Resolution Package (Materials) on the Tenant by registered mail on May 7, 2023. The tracking number is provided on the first page of this Decision. BC2 testified they had not received the Tenant's Materials.

In light of the above undisputed testimony and evidence from Landlords I find that pursuant to section 89 of the Act, the Landlords' Materials were sufficiently served to the Tenant. I also find that the Tenant's Materials were not served in accordance with section 89 of the Act.

Preliminary Issue: Previous Application

The Landlords obtained a Monetary Order and Order of Possession on March 23, 2023 through a previous application to the Residential Tenancy Branch. The file number for the previous application is shown on the first page of this Decision.

In order to determine if the matter before me had already been decided, I asked the Landlords to provide further information regarding the previously issued Monetary Order and Order of Possession.

BC2 confirmed that the Monetary Order and Order of Possession had been served on the Tenant, though the parties had subsequently come to an agreement for the tenancy to continue and for the Tenant to enter into a payment plan with the Landlords in respect of the rental arrears. The Tenant had initially adhered to the payment plan, but had then missed payments which resulted in the Notice being issued.

Given the above, I find that the parties agreed to reinstate the tenancy following the service of the Order of Possession and therefore, I am able to hear the matter before me.

Issues to be Decided

- 1) Should the Notice be canceled?
- 2) If not, are the Landlords entitled to an Order of Possession?
- 3) Are the Landlords entitled to a Monetary Order for unpaid rent?
- 4) Are the Landlords entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The attending party was 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.

BC2 provided the following testimony regarding the tenancy:

- The tenancy began on October 1, 2022.
- Rent is \$1,920.00 per month due on the first day of the month.
- A security deposit of \$960.00 was paid by the Tenant which the Landlords still hold.
- There is a written tenancy agreement which was entered into evidence.
- The Landlords do not know for certain if the Tenant still occupies the rental unit.

BC2 testified as follows. The Landlords and the Tenant had agreed to a payment plan to clear rental arrears. The Tenant initially kept to this payment plan, though in April 2023 the Tenant was late with their payment.

The Notice was issued on April 8, 2023 by attaching to the door of the rental unit. A witnessed Proof of Service document was entered into evidence by the Landlords. A copy of the Notice was also entered into evidence by the Landlords. The Notice is signed April 8, 2023 and provides an effective date of April 18, 2023. The amount of outstanding rent listed on the Notice is \$5,180.00.

The Tenant has not paid any rent since the Notice was issued. As of May 1, 2023 the total amount of outstanding rent is \$7,100.00.

The Landlords do not know if the Tenant still occupies the rental unit. The Tenant indicated to the Landlords they may be vacating the rental unit on May 14, 2023. The

Landlords asked for email confirmation from the Tenant when they had vacated the rental unit, which has not been provided. The Landlords seek an Order of Possession and a Monetary Order for unpaid rent.

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.

I accept the Landlords' undisputed testimony that rent due on April 1, 2023 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 April 8, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on April 11, 2023, the third day after it is attached to the door 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 April 21, 2023 instead of April 18, 2023. I find the Notice was served in accordance with section 88 of the Act.

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).

Based on the above findings, I grant the Landlords' Application and dismiss the Tenant's Application without leave to reapply. The Landlords are issued an Order of Possession pursuant to section 55(2)(b) of the Act. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on April 21, 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 \$7,100.00 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 in partial satisfaction of the payment order.

Conclusion

The Tenant's Application is dismissed.

The Landlords' Application is granted.

The Landlords are issued an Order of Possession. A copy of the Order of Possession is attached to this Decision. It is the Landlords' obligation to serve the Order of Possession on the Tenant. 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. 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 | \$7,100.00 |
| Filing fee | \$100.00 |
| Less: security deposit | (\$960.00) |
| Total | \$6,240.00 |

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 30, 2023

Residential Tenancy Branch