



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BAKONYI HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRx2, MNR-Lx2, FFLx2

Introduction

This dispute relates to the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- Order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 7, 2022 (10 Day Notice),
- \$9,372 in unpaid rent,
- Filing fees of \$200.

The Agents attended the participatory hearing and were affirmed. During the hearing the Agents were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (Notice of Hearing) and Notice of an Adjourned Hearing (Notice of Adjourned Hearing), application and documentary evidence (Hearing Packages) were considered. The Agents testified that both Hearing Packages were served on the tenant by registered mail. Two registered mail tracking numbers were provided, RN 623 427 337 CA and RN 725 907 625 CA.

Based on the above and the Canada Post registered mail tracking website, which indicates that both packages were returned to the sender as "unclaimed" I find the tenant is deemed served under section 90 of the Act 5 days after both Hearing Packages were mailed.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find these matters to be unopposed by the tenant and the hearing continued without the tenant present.

Preliminary and Procedural Matters

The Agents confirmed that as of the date of the hearing, the tenant now owes unpaid rent from November 2022 to June 2023, inclusive and continues to occupy the rental unit without paying any rent. The Agents requested to amend the applications for more rent owed and I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the applications pursuant to section 64(3)(c) of the Act, to \$10,536, which includes the two \$100 filing fees.

The Agents confirmed they did not have an email address for the tenant. The decision and orders will be emailed to the Agent and sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fees under the Act?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2018 and converted to a month-to-month tenancy after September 30, 2019. Monthly rent in the amount \$1,292 is due on the first day of each month.

The Agents testified that the 10 Day Notice posted to the tenant's door on November 7, 2022. The tenant did not pay the \$4,201 listed as owing and has not paid rent or filed to dispute the 10 Day Notice.

The Agents confirmed that the tenant owes the following unpaid rent:

1. November 2022 rent of \$1,292,
2. December 2022 rent of \$1,292,
3. January 2023 rent of \$1,292,
4. February 2023 rent of \$1,292,
5. March 2023 rent of \$1,292,
6. April 2023 rent of \$1,292,
7. May 2023 rent of \$1,292,
8. June 2023 rent of \$1,292.

The landlord is seeking an order of possession and a monetary order. The Agents are also seeking the \$625 security deposit to offset any amount owing.

Analysis

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

Order of possession – I accept the Agents' undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on November 10, 2022. The effective vacancy date of the Notice is listed as November 18, 2022, which automatically corrects under section 53 of the Act to November 20, 2022 and has passed.

I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was November 20, 2022. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenant has overheld the rental unit since November 20, 2022.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the disputed testimony of the Agents that the tenant now owes \$10,336 as noted above.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$10,336** as indicated above.

As the landlord has succeeded with their applications, I grant the landlord the recovery of the cost of the filing fees in the amount of **\$200**, pursuant to section 72 of the Act.

I find the \$625 security deposit has accrued \$5.45 in interest and that the landlord continues to hold a security deposit/interest of \$630.45. I authorize the landlord to retain the tenant's entire \$630.45 security deposit/interest to offset the \$10,536 amount owing.

Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenant in the amount of **\$9,905.55** owing by the tenant to the landlord.

Conclusion

The landlord's applications are fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenancy ended on November 20, 2022.

The tenants are cautioned that they could be held liable for all costs related to enforcement of the order of possession including court costs and bailiff fees.

The landlord has established a total monetary claim of \$10,536 and has been granted a monetary order less the security deposit/interest as noted above. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants are cautioned that they could be held liable for all costs related to enforcement of the monetary order.

The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision by regular mail as indicated above.

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: June 12, 2023

Residential Tenancy Branch