



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding KIWASSA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 55(2)(b) of the *Residential Tenancy Act* (the Act);
- to recover 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 the filing fee under section 72 of the Act

One of the Tenants and the Landlord's Agent attended the hearing. 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 Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Package (the Materials) and evidence. Based on the Tenant's testimony I find that the Landlord served their Materials as required under section 89 of the Act. The Tenants did not submit any documents into evidence.

Issues to be Decided

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

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 August 1, 2011.
- Rent is \$1,456.00 per month due on the first day of the month.
- A security deposit of \$606.00 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 Tenants did not pay rent due on December 1, 2022. At this time rent was \$1,428.00 per month. A rent increase effective January 1, 2023 took rent to \$1,456.00 per month. The Tenants have not paid any rent for 7 months now and as of June 1, 2023 the total rental arrears stand at \$10,164.00.

The Notice was served to the Tenants on April 4, 2023 by attaching a copy to the door of the rental unit. A copy of the Notice was entered into evidence. The Notice is signed April 4, 2023 and provides an effective date of April 17, 2023. The outstanding rent listed is \$1,456.00 due on April 1, 2023. The Landlord's Agent explained that the amount listed on the Notice is one month's rent and that a summary of the total outstanding rent was sent to the Tenants on April 19, 2023. The Landlord seeks a Monetary Order for outstanding rent and an Order of Possession.

The Tenant testified as follows. They did not dispute the Landlord's Agent's testimony and agreed with the amount of outstanding rent put forward. They acknowledged receipt of the Notice.

The Tenant described legal issues they had encountered in relation to their business which had caused them and their family financial hardship. They were hopeful that a settlement regarding the legal issues would be reached soon and once this is done, they would be able to pay their rental arrears. The Tenant had let the Landlord know about this.

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 Landlord's undisputed testimony that rent due December 1, 2022 was not paid by the Tenants. 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 4, 2023 by attaching a copy to the door of the rental unit, therefore would have been deemed received on April 7, 2023, the third day after it is served in accordance with section 90 of the Act.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenants receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a) of the Act. The Tenant provided testimony regarding recent events in their personal life which gave an explanation as to why rent had not been paid. Whilst I have sympathy for the Tenant and their situation, the Act does not allow me to consider these as valid reasons for non-payment of rent. Additionally, there is no record of the Tenants disputing the Notice. Therefore, under section 46(5) of the Act, the Tenants are presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. I find that the Tenancy ended on April 17, 2023 in accordance with the Notice.

The Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenants are ordered to pay \$10,164.00 in unpaid rent to the Landlord.

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.

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

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. The Tenants have two days to vacate the rental unit from the date of service or deemed service. 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. It is the Landlord's obligation to serve the Monetary Order 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	\$10,164.00
Filing fee	\$100.00
Less: security deposit	(\$606.00)
Total	\$9,658.00

The Landlord is authorized to retain the security deposit.

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: June 13, 2023

Residential Tenancy Branch