



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding KEKINOW NATIVE 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

An Agent for the Applicant Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord's Agent 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 9:40 A.M. to enable the Respondent Tenant to connect with this teleconference hearing scheduled for 9:30 A.M., 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 Landlord and I were the only parties who had called into this teleconference.

Rule 7.3 of the *Rules of Procedure* allows a hearing to continue in the absence of the respondent.

The Landlord's Agent testified they served the Notice of Dispute Resolution Package (Materials) on the Tenants by registered mail on May 19, 2023. The tracking number is provided on the first page of this Decision. In light of the above evidence and testimony from the Landlord's Agent I find that in accordance with section 89 of the Act, the Landlord's Materials were sufficiently served to the Tenant.

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 retain the security deposit?
4. Is the Landlord entitled to recover the filing fee for the Application 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.

The Landlord's Agent confirmed the following regarding the tenancy:

- The tenancy began on May 1, 2020.
- Rent is \$1,137.00 per month plus an additional \$25.00 per month for parking, per the tenancy agreement, due on the first day of the month.
- A security deposit of \$550.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant no longer occupies the rental unit.

The Landlord's Agent testified as follows. The Tenant did not pay rent due May 1, 2023 and so the Notice was issued on May 4, 2023 by attaching a copy to the door of the rental unit. The Tenant has not paid any rent since the Notice was issued and the Landlord seeks \$2,324.00 in unpaid rent and parking fees, which are included in the tenancy agreement, as rent due June 1, 2023 was also not paid by the Tenant.

The Landlord's Agent had inspected the rental unit on June 12, 2023, the day before the hearing. They found the Tenant had vacated the rental unit and left the keys behind. The Tenant has not communicated with the Landlord, so it is not known when the Tenant vacated the rental unit. As the Tenant has vacated the rental unit, the Landlord does not seek an Order of Possession and only a Monetary Order is requested, as well as authority to retain the security deposit.

A copy of the Notice was entered into evidence by the Landlord. It is dated May 4, 2023 and provides an effective date of May 14, 2023. A copy of a witnessed Proof of Service (RTB-34) form was also entered into evidence by the Landlord.

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 Agent's undisputed testimony that rent due on May 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 May 4, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on May 7, 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 May 17, 2023 instead of May 14, 2023.

I accept the Landlord's Agent's 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) of the Act. 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 Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act, however as the Landlord's Agent confirmed that as the Tenant had vacated the rental unit an Order of Possession was no longer

required, therefore one shall not be issued. I find that the Tenancy ended on May 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 Tenant is ordered to pay \$2,324.00 in unpaid rent to the Landlord. The Landlord confirmed the balance is made up partially of parking fees. I note the tenancy agreement on the final page provides for a charge of \$25.00 for optional parking so find the Landlord is entitled to recover these fees from the Tenant.

As the Landlord has been successful in their Application, I order the Tenant 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 ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision.

Conclusion

The Application is granted.

No Order of Possession is issued as the Landlord's Agent confirmed one was not required.

The Landlord is 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 Landlord's 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	\$2,324.00
Filing fee	\$100.00
Less: security deposit	(\$550.00)
Total	\$1,874.00

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