



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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
- the cost of the filing fee under section 72 of the Act

The Applicant Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord 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 11:25 AM. to enable the Respondent Tenant to connect with this teleconference hearing scheduled for 11:00 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 testified they served the Notice of Dispute Resolution Package (Materials) on the Tenants by registered mail on April 21, 2023. The Canada Post tracking number and receipt were provided by the Landlords as evidence. The tracking number is provided on the first page of this Decision. In light of the above evidence, I find that the Landlord's Materials were sufficiently served in accordance with sections 89 and 90 of the Act.

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 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 confirmed the following regarding the tenancy:

- The tenancy began on February 16, 2014.
- Rent is \$1,054.00 per month due on the first day of the month plus a parking fee of \$25.00 per month.
- A security deposit of \$450.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit.

The Landlord testified as follows. The Tenant is presently out of the province, though all their belongings are still in the rental unit. A friend of the Tenant's had been arranging for rent to be paid and no notice to end tenancy had been given by the Tenant. The Landlord had tried to communicate with the Tenant to find out their plans for returning to the rental unit but did not get a reply.

The rent due April 1, 2023 went unpaid and the Notice was issued on April 7, 2023 by attaching to the door of the rental unit. The outstanding rent was paid in full on April 25, 2023. A receipt for “use and occupancy only” was issued to the Tenant. Rent due May 1, 2023 was paid but the payment due on June 1, 2023 was not. The amount of outstanding rent as of June 1, 2023 is \$1,079.00.

A copy of the Notice was entered into evidence by the Landlord. The Notice is signed April 7, 2023 and provides an effective date of April 17, 2023. The amount of outstanding rent is given as “\$1,054 + 25 parking + 50 late fee”. The Landlord explained that rent is \$1,054.00 per month and, per the tenancy agreement, a parking fee of \$25.00 is also charged and they charge a \$50.00 late fee. A copy of the tenancy agreement was entered into evidence. Charges of \$20.00 are seen in section 3. The Landlord testified the \$20.00 refers to parking fees and the parties had agreed to increase the amount to \$25.00 per month after the tenancy agreement was signed.

The Landlord seeks an Order of Possession and a Monetary Order for the 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 Landlord’s undisputed testimony that rent due 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 7, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on April 10, 2023, the third day after it is served 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 20, 2023 instead of April 17, 2023.

I accept the Landlord’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. The

outstanding rent was paid in full, but this was done after 5 days of the Notice being deemed received. I accept that a receipt for “use and occupancy only” was issued to the Tenant so I find the tenancy was not reinstated. 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 granted an Order of Possession pursuant to section 55(2)(b) of the Act. I find that the Tenancy ended on April 20, 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 \$1,079.00 in unpaid rent to the Landlord. I am satisfied this amount is made up of only rent and parking fees due in accordance with the tenancy agreement and that no late fees exceeding the permitted amount are included in this figure. The Landlord was made aware of the maximum charge of \$25.00 per late payment, per section 7 of the *Residential Tenancy Regulation*.

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.

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 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 Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is authorized to retain the security deposit.

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	\$1,079.00
Filing fee	\$100.00
Less: security deposit	(\$450.00)
Total	\$729.00

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: June 09, 2023

Residential Tenancy Branch