



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D.A. RUDA CONST LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. on November 21, 2023 concerning an application made by the landlord seeking an order of possession and a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the application. The application was made by way of the Direct Request process which was adjourned to this participatory hearing, and an Interim Decision was provided.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord testified that the tenants were individually personally served with the Notice of Dispute Resolution Proceeding and all other required documents, including all of the landlord's evidence, on October 20, 2023. The landlord has provided 2 Proof of Service documents indicating that service, both with signatures of the respondents. I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on August 1, 2022 and reverted to a month-to-month tenancy after July 31, 2023 and the tenants still reside in the rental unit. Rent in the amount of \$2,150.00 is payable on the 1st day of each month. On July 30, 2022 the landlord collected a security deposit from the tenants in the amount of \$1,075.00, as well as a pet damage deposit in the amount of \$1,075.00 which was collected on August 15, 2022. Both deposits are still held in trust by the landlord. The rental unit is an apartment suite, and a copy of the tenancy agreement has been provided for this hearing. The tenancy agreement does not indicate a full address of the rental unit, which the landlord's agent provided orally at the hearing.

The landlord's agent further testified that on September 15, 2023 the tenants were served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by posting it to the door of the rental unit with a witness. A copy of the Notice has been provided for this hearing and it is dated September 15, 2023 and contains an effective date of vacancy of September 25, 2023 for unpaid rent in the amount of \$2,150.00 that was due on September 1, 2023.

The tenants paid \$500.00 on September 26, 2023, leaving \$1,650.00 outstanding for that month. The outstanding amount has increased and is now \$3,000.00. The tenants paid \$1,100.00 on October 7, 2023; \$550.00 on October 14, 2023 and \$1,300.00 on October 25, 2023.

Analysis

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice), the tenant must pay the rent in full within 5 days of receipt, in which case the Notice is of no effect, or dispute the Notice. If the tenant does neither within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the Notice was served by posting it to the door of the rental unit on September 15, 2023, which is deemed to have been served 3 days later, or September 18, 2023. I accept the undisputed testimony of the landlord that after the Notice was issued the tenants paid \$500.00 on September 22, 2023, which is not the full amount due. I have no application before me from the tenants disputing the Notice, and therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an order of possession. Since the effective

date of vacancy, corrected to September 28, 2023 has passed, I grant the order of possession effective on 2 days notice to the tenants. The tenants must be served with the order of possession, which may be filed in the Supreme Court of British Columbia for enforcement.

With respect to the landlord's monetary claim, I find that the amounts due and paid to the landlord are as follows:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE
September 1, 2023	Rent Due	\$2,150.00		\$2,150.00
September 22, 2023	Partial Payment		\$500.00	\$1,650.00
October 7, 2023	Rent Due	\$2,150.00		\$3,800.00
October 7, 2023	Partial Payment		\$1,100.00	\$2,700.00
October 14, 2023	Partial Payment		\$550.00	\$2,150.00
October 25, 2023	Partial Payment		\$1,300.00	\$850.00
November 1, 2023	Rent Due	\$2,150.00		\$3,000.00

I find that the landlord is entitled to recover \$3,000.00 from the tenants for unpaid rent.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenants.

I grant a monetary order in favour of the landlord as against the tenants in the amount of \$3,100.00. The tenants must be served with the order which may be filed in the

Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

I leave it to the parties to deal with the security deposit and pet damage deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,100.00.

This order is final and binding and may be enforced.

This decision 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: November 21, 2023

Residential Tenancy Branch