



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WELBEC PROPERTIES LTD and WELBEC PROPERTIES LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. on December 6, 2023 concerning an application made by the landlord seeking an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The hearing was originally scheduled to convene at 9:30 a.m. on November 3, 2023, however I adjourned the hearing due to technical difficulties with respect to evidence, and my Interim Decision was provided to the parties.

On December 6, 2023 the landlord was represented at the hearing by an agent who gave affirmed testimony and called 1 witness and the owner of the landlord company, who also gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the notice of this hearing and all evidence by registered mail on November 8, 2023, and has provided a Proof of Service document and a Canada Post Registered Domestic Customer Receipt addressed to the tenant. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act* and my order of November 3, 2023.

All evidence of the landlord has been reviewed and is considered in this Decision.

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 tenant for unpaid rent?

Background and Evidence

The landlord's agent (RS) testified that this month-to-month tenancy began on March 1, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$1,600.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and the landlord's agent also resides on the property. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that he witnessed another person serve a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by posting it to the door of the rental unit on August 31, 2023. The tenant saw the landlord's agent and took the Notice off the door. A copy of the Notice has been provided for this hearing and it is dated August 31, 2023 and contains an effective date of vacancy of September 10, 2023 for unpaid rent in the amount of \$1,675.00 that was due on July 1, 2023.

The landlord's witness (CS) testified that the witness attached to the door of the rental unit a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities on August 31, 2023. The witness also saw the tenant take the Notice off the door.

The owner of the landlord company (PK) testified that the tenant is currently in arrears of rent the sum of \$6,575.00, including this month, and has provided a tenant ledger for this hearing. The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities shows \$1,675.00 outstanding as of July 1, 2023. The tenant owed \$75.00 from a previous month.

The tenant has not paid the rent and has not served the landlord with an Application for Dispute Resolution disputing the 10 Day Notice, and the landlord seeks an order of possession and a monetary order for the outstanding rent.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent

in full or dispute the Notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. I accept the testimony of the landlord's witness and agent who both testified that the tenant was served with the Notice by posting it to the door of the rental unit on August 31, 2023. Service in that manner is deemed to have been accomplished 3 days later, or September 3, 2023.

I also accept the undisputed testimony of the owner of the landlord company that the tenant has not paid the rent and arrears have continued to accumulate. I also accept the testimony that the landlord has not been served with an Application for Dispute Resolution by the tenant, and I have no such application before me. Therefore, I find that the tenant is 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 has passed, I grant the order of possession effective on 2 days notice to the tenant.

The tenant must be served with the order of possession, which may be filed in the Supreme Court of British Columbia for enforcement.

I have also reviewed the tenant ledger which also shows that the tenant paid a security deposit in the amount of \$500.00 on February 27, 2023 and a pet damage deposit of \$800.00 on March 22, 2023, contrary to the testimony of the landlord's agent.

The ledger commences with the payment of the security deposit of \$500.00 on February 27, 2023, and shows a credit balance of \$500.00. It adds the \$500.00 security deposit and pet damage deposit of \$800.00, leaving a new balance of \$2,400.00. The deposits are not unpaid rent. On March 1, 2023 the tenant paid \$750.00, and \$850.00 on March 6, and an additional \$800.00 on March 22, 2023, which then brings the balance due to \$0.00. I find that the ledger includes the deposits.

The ledger also shows that the amount of rent due to the landlord from March 1, 2023 to November 1, 2023 is \$14,400.00, and the tenant paid a total of \$9,425.00. The difference is \$4,975.00, and the landlord has a \$500.00 security deposit and a pet damage deposit of \$800.00.

I also accept the undisputed testimony of the owner of the landlord company that no rent has been paid for December, 2023, which would bring the balance due to \$6,575.00.

I am satisfied in the evidence that the landlord has established a monetary claim of **\$6,575.00** 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 tenant.

I grant a monetary order in favour of the landlord as against the tenant in the amount of **\$6,675.00**. The tenant 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 order that the parties 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 tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,675.00.

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: December 06, 2023

Residential Tenancy Branch