



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP MNR-DR FFL

Introduction

This matter originally proceeded by way of a Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession for unpaid rent, unpaid rent and to recover the cost of the filing fee. On June 14, 2022, an adjudicator adjourned this matter to a participatory hearing which was held on this date, Friday, July 8, 2022 at 9:30 a.m. Pacific Time. An Interim Decision dated June 14, 2022 (Interim Decision) was issued, which should be reviewed in conjunction with this Decision.

Landlord WDWZ (landlord) attended the teleconference as scheduled and provided affirmed testimony. The landlord also presented their documentary evidence. I have described the evidence relevant to the matters before me below.

As the tenants did not attend the hearing, I will only address service of the Notice of Adjourned Hearing, application, and documentary evidence, as service of the other documents has already been addressed in the Interim Decision. The landlord provided 2 registered mail tracking numbers, which have been included on the cover page of this decision for ease of reference. Documents sent by registered mail are deemed served 5 days after mailing pursuant to section 90 of the Act. According to the online registered mail tracking information the registered mail packages were both mailed, one addressed to each tenant, on June 15, 2022. I find both tenants were duly served as of June 20, 2022, which is 5 days after both packages were mailed. I note that refusal or neglect on the part of the respondents to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act. The landlord testified that both tenants continue to occupy the rental units and owe 7 months of rent now as of the date of the hearing.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed from January, February and March of 2022, the tenants have subsequently not paid the rent for April to July 2022 inclusive. As a result, the landlord requested to amend the application to include a total of 7 months rent at \$1,700.00 combined per month in rent. The landlord also stated that the tenants continue to occupy the rental units. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$5,200.00 to \$11,900.00 before the filing fee.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenants do not have an email address the decision will be sent by regular mail to the tenants.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to the filing fee?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. The tenancy began on January 1, 2022. The monthly rent is \$1,700.00 with each tenant paying \$850.00 and is due on the first day of each month. The tenant failed to pay a security deposit.

The landlord testified that a few days after moving in, the tenants asked to use a second unit as storage and the landlord stated only for a few days. The landlord testified that the tenants have failed to remove their items from unit 2 and now occupy both unit 1 and 2 and the landlord is seeking an order of possession for both units, plus all rent arrears for unit 1.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 1, 2022 (10 Day Notice) was placed in the mailbox of the tenants on April 1,

2022 and was witnessed by third party, RG (witness). Section 90 of the Act states that documents placed in the mailbox are deemed served 3 days after they are posted.

The landlord testified that the tenants have failed to pay any rent between January and July of 2022 for a total of \$11,900.00 owing.

The 10 Day Notice did not include the unit numbers, which I will address below.

Analysis

Based on the landlord's undisputed documentary evidence and undisputed testimony and on the balance of probabilities, I find the following.

Pursuant to section 68(1)(a) and 68(1)(b) of the Act, I amend the 10 Day Notice to include units 1 and 2, which I find the tenants would ought to have known as they continue to occupy both units.

Order of Possession - I accept the landlord's undisputed testimony that the tenants failed to any rent during the tenancy and since being served with the 10 Day Notice and that the tenants failed to dispute the 10 Day Notice. Given the above, I find the tenants are conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice, April 14, 2022. Pursuant to section 53 of the Act, incorrect effective dates of a Notice to End Tenancy automatically correct. The 10 Day Notice was posted to the door on April 1, 2022. Pursuant to section 90 of the Act, documents served by posting to the tenant's door are deemed received 3 days later which makes the deemed service date of the 10 Day Notice April 4, 2022. I grant the landlord an order of possession effective **two (2) days** after service on the tenants. This order of possession is for both units 1 and 2.

I find the tenancy ended on April 14, 2022 and that the tenants have been overholding 2 units since that date.

Unpaid rent – I accept the undisputed testimony that the tenants have failed to pay a total of \$11,900.00 comprise of \$1,700.00 between January and July 2022, inclusive. Therefore, I find the tenants breached section 26 of the Act which states that rent is due on the date that is due in the tenancy agreement, which is the first day of each month. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$11,900.00** for unpaid rent and loss of rent.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the total amount of **\$12,000.00** comprised of \$11,900.00 in unpaid rent, plus the \$100.00 filing fee.

Conclusion

The landlord's application is fully successful.

The tenancy ended April 14, 2022 and the tenants must vacate units 1 and 2. The landlord has been granted an order of possession effective two (2) days after service on the tenants, which must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order of \$12,000.00. The monetary order must be served on the tenants and may be then enforced in the Provincial Court (Smalls Claims Division).

The tenants are reminded that they can be held liable for all costs related to enforcement of both orders. The decision and orders will be emailed to the landlord for service on the tenants. The tenants will have the decision sent to them by regular mail.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 8, 2022

Residential Tenancy Branch