



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on November 18, 2022 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

J.R. appeared as the Landlords’ agent. The Tenant did not attend the hearing, nor did someone attend on their behalf.

The Landlords’ agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

This matter had been scheduled as a direct request application but was adjourned to a participatory hearing following the interim decision of January 23, 2023. The interim decision notes that the Landlords’ application materials were deemed received by the Tenant on December 10, 2022 after being sent via registered mail on December 5, 2022. When granting the adjournment, the adjudicator ordered the Landlords serve the Notice of the Reconvened Hearing and the interim reasons on the Tenant.

The Landlords’ agent advises that the interim reasons and Notice of the Reconvened Hearing were served via registered mail sent on January 25, 2023. I am provided with a copy of the registered mail receipt by the Landlord as proof of service. I find that the Landlords have served the Tenant with these documents in accordance with s. 89 of the

Act. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the documents on January 30, 2023.

Issues to be Decided

- 1) Are the Landlords entitled to an order of possession?
- 2) Are the Landlords entitled to an order for unpaid rent?
- 3) Are the Landlords entitled to their filing fee?

Evidence and Analysis

The parties were 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 Landlords' agent confirms the following details with respect to the tenancy in his affirmed testimony:

- The Tenant moved into the rental unit on April 1, 2020.
- Rent of \$1,800.00 is due on the first of each month.
- The Tenant paid a security deposit of \$1,000.00 to the Landlords.

I am provided with an unsigned copy of the tenancy agreement. I accept the undisputed testimony provided to me by the Landlords' agent that the details of the tenancy listed above are correct.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

The Landlords' agent tells me that the 10-Day Notice was served on the Tenant via registered mail sent on November 18, 2022. I accept that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on November 23, 2022.

I am provided with a copy of the 10-Day Notice by the Landlords. As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord,

states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. This information is stated at the top of the standard form provided by the Residential Tenancy Branch. The 10-Day Notice states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant did neither. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date was December 3, 2022.

I am advised that the Tenant continues to reside within the rental unit. Accordingly, I find that the Landlords are entitled to an order of possession under s. 55(2)(b) of the *Act*. I order the Tenant provide vacant possession of the rental unit to the Landlords within two days of receiving this order.

The Landlords also seek an order for unpaid rent. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The Landlords provide a rent ledger in their evidence spanning the period between November 1, 2021 and November 1, 2022. The Landlords' agent affirms that the ledger is correct and further advises that the Tenant made payment of \$3,000.00 on January 23, 2023, \$2,500.00 on January 24, 2023, and \$3,000.00 on January 30, 2023. I am told by the agent that the Tenant has not otherwise made payment to the Landlords.

Based on the undisputed evidence provided to me by the Landlord, I find that the Tenant has failed to pay rent in breach of the tenancy agreement and s. 26 of the *Act*. I find that the Landlords have suffered loss of rental income from the breach that could not have been mitigated as the Tenant continues to reside within the rental unit. I further find that the Landlord has demonstrated unpaid rent as follows:

Month	Rent Due	Rent Paid	Arrears
January 2022	\$1,800.00	\$0.00	\$1,800.00
February 2022	\$1,800.00	\$1,800.00	\$0.00
March 2022	\$1,800.00	\$1,800.00	\$0.00
April 2022	\$1,800.00	\$1,800.00	\$0.00
May 2022	\$1,800.00	\$3,000.00	(\$1,200.00) (overpayment)
June 2022	\$1,800.00	\$0.00	\$1,800.00
July 2022	\$1,800.00	\$1,200.00	\$600.00
August 2022	\$1,800.00	\$1,000.00	\$800.00
September 2022	\$1,800.00	\$0.00	\$1,800.00
October 2022	\$1,800.00	\$0.00	\$1,800.00
November 2022	\$1,800.00	\$1,000.00	\$800.00
December 2022	\$1,800.00	\$0.00	\$1,800.00
January 2023	\$1,800.00	\$8,500.00	(\$6,700.00) (overpayment)
February 2023	\$1,800.00	\$0.00	\$1,800.00
March 2023	\$1,800.00	\$0.00	\$1,800.00
April 2023	\$1,800.00	\$0.00	\$1,800.00
Total Arrears			\$8,700.00

I find the Landlords have demonstrated a monetary claim for unpaid rent totalling \$8,700.00.

I find the Landlords were successful in their application. Pursuant to s. 72(1) of the *Act*, I order the Tenant pay the Landlords \$100.00 for their filing fee.

I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlords retain the security deposit of \$1,000.00, plus interest accrued of \$5.13, in partial satisfaction of their monetary claims.

Conclusion

I grant the Landlords an order of possession pursuant to s. 55(2) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order.

I order pursuant to ss. 67 and 72 of the *Act* that the Tenant pay \$8,700.00 in unpaid rent and \$100.00 for the Landlords' filing fee. I also order pursuant to s. 72(2) of the *Act* that the Landlords retain the security deposit and interest of \$1,005.13 in partial satisfaction of the monetary claims. Combined, I order the Tenant pay **\$7,794.87** to the Landlords (\$8,700.00 + \$100.00 - \$1,005.13).

It is the Landlords obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced as an order of that Court.

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: April 06, 2023

Residential Tenancy Branch