



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on January 24, 2023 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 1:50 p.m. to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, present evidence and make submissions.

The landlord testified that on February 23, 2023, copies of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision were sent to the tenants by registered mail. In the hearing, the landlord provided registered mail tracking numbers in support of service (RN 524811506CA and RN 524811483CA).

I find the tenants to be deemed served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenants had not yet vacated the rental unit and therefore asked to amend her claim to include outstanding rent up to the date of the hearing. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that the landlord would suffer this loss if the tenants neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The tenancy began on October 15, 2022. The current monthly rent is \$1850.00 payable on the 1st day of each month.

The landlord submitted a copy of a 10 Day Notice dated November 18, 2022. The 10 Day Notice indicates an outstanding rent amount of \$1850.00 which was due on November 1, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that the 10 Day Notice was served to the tenants in person by an agent of the landlord on November 18, 2022. A signed statement from the landlord's agent was submitted as evidence.

The landlord testified the outstanding rent was not paid within 5 days and since that time the tenants have only made a payment of \$1500.00 in December 2022 and another payment of \$800.00 on May 5, 2023.

The landlord's amended monetary claim is for outstanding rent in the amount of \$10,650.00. The landlord testified that this includes unpaid rent as per below:

Month	Amount
November 2022	1850.00

December 2022	1850.00
January 2023	1850.00
February 2023	1850.00
March 2023	1850.00
April 2023	1850.00
May 2023	1850.00
Less paid December 2022	(1500.00)
Less paid May 5, 2023	(800.00)
Total Unpaid rent:	\$10,650.00

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted an end to the tenancy.

I am satisfied that the tenants were served with the 10 Day Notice on November 18, 2022. The tenants would have had until November 23, 2022 to pay the outstanding amount as per the 10 Day Notice which they failed to do.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested testimony and claim for outstanding rent of \$10,650.00 as detailed above.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$10,750.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of \$10,750.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: May 12, 2023

Residential Tenancy Branch