

DECISION

Introduction

The Landlord seeks an order of possession on an undisputed notice to end tenancy under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”), a monetary order for unpaid rent and unpaid utilities under section 55(4)(b) of the Act. They also seek to recover the cost of the application fee under section 72 of the Act.

Procedural Issue: Service of Notice of Dispute Resolution Proceeding

The dispute resolution hearing commenced at 9:30 AM on September 23, 2024, and in attendance was the Landlord and his nephew, who provided interpretation services. The Tenant did not attend the hearing, which ended at 9:42 AM.

The Landlord confirmed under affirmation that he served the Notice of Dispute Resolution Proceeding by sending it to the Tenant by Canada Post registered mail on August 27, 2024. The Landlord submitted proof of service documentation. Further, a verification on the Canada Post tracking website indicates that the registered mail was received and signed for on August 28, 2024.

Based on this undisputed evidence it is my finding that the Tenant was served the required documentation necessary for them to participate in the hearing.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order?
3. Is the Landlord entitled to recover the cost of the application fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began on May 1, 2024. The rent is \$2,300.00, which is due on the first date of the month, and the Landlord currently retains a \$1,150.00 pet damage deposit. There is a copy of the written *Residential Tenancy Agreement* in evidence; this agreement is signed and initialed by both the Landlord and the Tenant. Under the tenancy agreement, the Tenant is also responsible for paying utilities.

The Landlord served the *10 Day Notice to End Tenancy for Unpaid Rent* (the "Notice") on July 4, 2024, by leaving it in the mailbox of the rental unit. Page two of the Notice indicates that the Tenant did not pay rent and utilities that were due on August 1, 2024. All pages of the Notice were served and submitted into evidence. The Tenant has not disputed the Notice, the Tenant has not paid any rent for either August or September, and the Landlord seeks an order of possession along with a monetary order. There is also in evidence a copy of a 30-day utilities demand letter, and a copy of the utility bill.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the Act, regulations, or the tenancy agreement. A tenant is also required to pay utilities if set out as a term in the tenancy.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act. Upon receipt of a notice to end tenancy issued under section 46 of the Act, a tenant has 5 days to either pay the overdue rent or file an application disputing the notice as per section 46(4).

If a tenant fails to comply with the 5-day deadline, section 46(5) is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice.

Section 55(2)(c) permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this application, the Landlord served the Notice in accordance with the Act. Further, I find that the Notice complies with section 52 of the Act, and the Tenant has not made an application to dispute the Notice. As such, it is my finding that the Landlord has proven, on a balance of probabilities, that they are entitled to an order of possession.

A copy of the order of possession is issued with this Decision to the Landlord. The Landlord must serve a copy of the order of possession upon the Tenant. If necessary, the Landlord may file and enforce the order of possession in the Supreme Court of British Columbia. The Tenant has seven (7) days from receiving, or deemed receiving, the order of possession to vacate the rental unit.

Section 55(4)(b) of the Act permits an arbitrator to grant an order requiring the payment of rent or utilities for which a notice to end tenancy was issued. Further, Rule 7.12 of the *Rules of Procedure* permit an application to be amended at a hearing in circumstances which include when rent owing has increased since the time the landlord made their application for dispute resolution. In this case, the Tenant now (as of September 23, 2024) owes a total of \$7,648.28 in unpaid rent and unpaid utilities. Last, the Tenant is ordered to pay \$100.00 under section 72 for the cost of the Landlord's application fee.

In total, the Landlord is awarded \$7,748.28. Pursuant to section 38(4)(b) of the Act, the Landlord is authorized and ordered to retain the Tenant's pet damage deposit in partial satisfaction of the award. The Tenant is thus ordered and required to pay, a balance of \$6,598.28 to the Landlord.

A monetary order is issued with this decision to the Landlord. The Landlord is instructed to serve a copy of the monetary order upon the Tenant. The Landlord may enforce the monetary order in the Provincial Court of British Columbia, Small Claims.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The Landlord is granted an order of possession of the rental unit with an effective date of seven (7) days from the date it is served.
2. A copy of the order of possession must be served by the Landlord on the Tenant.
3. The Landlord is awarded \$7,748.28.
4. The Landlord is authorized to retain the pet damage deposit.
5. The Landlord is granted a monetary order for \$6,598.28. A copy of the monetary order must be served by the Landlord upon the Tenant.

Dated: September 23, 2024

Residential Tenancy Branch