



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kingsen Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR OPC MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on November 30, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a 10 Day Notice to End Tenancy for unpaid rent or utilities (10 Day Notice);
- an order of possession based on a One Month Notice to End Tenancy for Cause (One Month Notice); and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that he sent the application package, including his amendment, along with his supporting evidence to the tenant on September 21, 2017, by registered mail. The Landlord's amendment was an application for an order of possession based on the One Month Notice. I find the Tenant is deemed to have received all of this package on September 26, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to further amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this request, I hereby amend the agent's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession based on the 10 Day Notice?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord entitled to an order of possession based on the One Month Notice?

Background and Evidence

The Landlord testified that rent, in the amount of \$594.00, is due on the first of each month. The Landlord stated that he does not hold a security deposit.

The Landlord testified that the Tenant has a long history of missed rent payments dating back several months. The Landlord stated that he has not received any rent from the Tenant for the months of June, July, August, September, October, and November of 2017.

The Landlord provided a copy of the 10 Day Notice, which was hand delivered to the Tenant on August 26, 2017. The 10 day Notice specified that the tenant owed \$1,782.00 in rent at that time (for June-August of 2017). Since that time, the Tenant has also failed to pay rent for September through November of 2017 and the Tenant owes \$3,564.00 in unpaid rent (6x\$594.00), as of the time of this hearing.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenant had a balance of unpaid rent at the time the 10 Day Notice was issued. On August 26, 2017, the 10 Day Notice was given to the Tenant in person; I find the tenant received the 10 Day Notice on this day.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the Tenant did either. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is sufficient evidence to demonstrate that the Tenant owes and has failed to pay rent for the last 6 months (June – November of 2017). As summarized above, I find the Tenant owes \$3,564.00 in unpaid rent (6x\$594.00), as of the time of this hearing.

The Landlord also requested that they be able to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenant to repay the \$100. In summary, I grant the monetary order based on the following:

Claim

Amount

Cumulative unpaid rent	\$3,564.00
Other:	
Filing fee	\$100.00
TOTAL:	\$3,664.00

Given my findings thus far, it is not necessary to consider if the landlord entitled to an order of possession based on the One Month Notice, as the tenancy is already ending based on the 10 Day Notice.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,664.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 30, 2017

Residential Tenancy Branch