



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on July 6, 2018, a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for this application. The matter was set for a conference call.

The Property Manager attended the hearing and was affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Property Manager testified the Application for Dispute Resolution, and Notice of Hearing had been personally delivered to the Tenants on August 3, 2018. I find that the Tenants have been duly served in accordance with the *Act*.

The Property Manager was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Property Manager testified that the tenancy began on March 1, 2018, as a one-year fixed tenancy; rent in the amount of \$995.00 is to be paid by the first day of each month and that the Tenants had paid a \$497.50 security deposit at the outset of this tenancy.

The Property Manager testified that she served the Tenants with the Notice to End Tenancy by attaching it to the Tenants' door or other conspicuous place at July 6, 2018, with an effective date of July 19, 2018. The Notice informed the Tenants of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants are presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Property Manager testified that the Tenants have not paid the outstanding rent for June and July as indicated in the Notice. The Property Manager also testified that the Tenants had not paid the rent for the subsequent months of August and September 2018 and have not moved out of the rental unit. The Property Manager testified that the Tenants had not served her with notification that they had filed an application to dispute the Notice.

The Landlord is seeking an order of possession and a monetary order for the outstanding rent.

Analysis

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

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears

indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

I find that the Tenants were deemed to have received the Notice on July 9, 2018. I also find that the Tenants have not paid the rent or disputed the Notice and are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a Landlord is entitled to request an order of possession when a tenant has not disputed the Notice.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award for loss of four months rent and is authorized to retain the Tenants' security deposit as partial satisfaction of this award.

As the Landlord has been successful in this application, I also find that the Landlord is entitled to recover their \$100.00 filing fee for this hearing.

I grant the Landlord a monetary order in the amount of \$3,582.50; consisting of \$3,980.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$497.50 that the Landlord is holding.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenants. The Tenants must be served with this Order. 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 **\$3,582.50**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. 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: September 21, 2018

Residential Tenancy Branch