



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Holdings & Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent dated April 9, 2019 ("10 Day Notice"), and for a monetary order of \$1,350.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, which consisted of unpaid rent.

Two agents for the corporate Landlord, L.B. and R.S. (the "Agents") appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses for the Landlord were also present and were available to provide affirmed testimony.

The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were there for the Landlord, and indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only people on the call, besides me, were the Agents and witnesses for the Landlord. I considered the Landlord's evidence of service of the Application and Notice of Hearing on the Tenant, which I have addressed below.

During the hearing the Agents were given the opportunity to provide their evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Agents provided their email address during the hearing and confirmed their understanding that the Decision would be emailed to them and mailed to the Tenant, and that any orders would be sent to the appropriate Party.

The Agent, R.S., confirmed that the Tenant was served with the Application for dispute resolution and documentary evidence via registered mail, and R.S. provided the Canada Post tracking number for this package. I checked the tracking number, which indicated that the package was mailed on April 9, 2019. Pursuant to section 90 of the Act, I find that the package was deemed served on the Tenant on April 14, 2019.

R.S. said that he miscalculated the amount of rent owing at the time of the Application, saying that it was \$1,250.00, rather than \$1,350.00 when the Application was served. Further, R.S. stated that the amount owing is now up to \$3,750.00, as the Tenant has not paid any rent since February 2019. R.S. said the Tenant owes \$625.00 per month for March through August 2019, or \$3,750.00 for six months of rent for the rental unit. The Agents requested that their Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$1,250.00 to \$3,750.00.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Agents stated that the periodic tenancy began prior to February 2018, but they did not know exactly when, because a different property management company managed

the residential property at the time when the tenancy began. The Agents confirmed that the Tenant pays \$625.00 toward the total monthly rent of \$1,275.00. The Agents said that the [N.H.S.B.C.] ("Housing Society") pays the remaining \$650.00 owing in rent, which is due on the first day of each month. The Agents did not know if the Tenant paid a security or pet damage deposit; however, R.S. said that the Tenant probably paid half or \$1,275.00 or \$637.50 for a security deposit.

The Agents said that the Tenant did not pay his \$625.00 of rent owing in March 2019, so the Landlord served the Tenant with a 10 Day Notice by posting it on his door and by mailing it via Canada Post registered mail. The Agents provided a tracking number for the registered mail dated April 9, 2019. I find that pursuant to section 90 of the Act, the 10 Day Notice was deemed served on the Tenant on April 14, 2019, at the latest.

The Agents said that the Tenant has not paid anything toward his rent owing, since February 2019, nor has he applied to RTB for dispute resolution for an order cancelling the 10 Day Notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 46(1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

. . .

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends

on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.
[emphasis added]

While the Landlord received a portion of the Tenant's rent owing from the Housing Society, I find the Tenant did not pay any part of the \$625.00 he owed for rent after he received the 10 Day Notice. Further, I find that the Tenant did not apply for dispute resolution at the RTB to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me, and pursuant to sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on April 14, 2019, five days after it was mailed to him via registered mail and posted on the rental unit door.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Agent, R.S., said that the Landlord was owed \$3,750.00 in unpaid rent as of August 1, 2019.

In deciding the Landlord's claims in this Application, I must determine whether the 10 Day Notice is valid. I find that the 10 Day Notice was signed, dated, contained the rental unit address and the effective vacancy date of June 1, 2019. I note that the effective date is weeks later than it has to be, as the Act states that the effective vacancy date is not earlier than 10 days after the 10 Day Notice was deemed served on the Tenant. As noted above, the 10 Day Notice was deemed served on the Tenant on April 14, 2019. Therefore, pursuant to section 53 of the Act, the vacancy effective date would be no earlier than April 24, 2019. However, I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony to deny or explain why he did not pay his rent. Further, he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$1,250.00 in rent owed for March and April, 2019. Therefore, based on all the evidence before me overall, I grant the Landlord an order of possession, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me

is that the Tenant has not paid full rent since February 2019, the order of possession will be effective two days after service of the order on the Tenant.

I also find that the Tenant owes the Landlord \$3,750.00 in unpaid rent for the months of March 2019 through to and including August 2019. Therefore, I grant the Landlord a monetary order for the amount of \$3,750.00, less the Tenant's security deposit of \$637.50, for a total monetary order of **\$3,112.50**.

Conclusion

The Tenant has not paid rent in full for more than the last six months, so the Landlord's Application for an Order of Possession is granted. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this order** on the Tenant.

The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Further, I have found that the Tenant owes the Landlord \$3,750.00 in unpaid rent, less the \$637.50 security deposit the Agents said the Tenant paid the Landlord. Therefore, I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$3,112.50**. This Order must be served on the Tenant by the Landlord as soon as possible, and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 13, 2019

Residential Tenancy Branch