



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROTHERS HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPRM-DR FFL
For the tenant: MT CNR

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 10, 2019 (10 Day Notice), for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, and for an extension of time to make an application to dispute a 10 Day Notice.

The tenant and legal counsel for the landlord CW (counsel) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant confirmed receiving the application and documentary evidence package from the landlord prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. Counsel submitted that the landlord and counsel were never served with the tenant's application or documentary evidence. The tenant provided two different dates that they claim to have personally served the landlord agent BS (agent), which were December 3, 2019 and December 13, 2019. Based on the conflicting testimony of the agent and the consistent submission of counsel, I find the tenant failed to serve the landlord with their application within 3 days of the November 10, 2019 Notice of Dispute Resolution Proceeding document as required by the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Therefore, I dismiss the tenant's application without leave to reapply as the tenant is now beyond the timeline to dispute the 10 Day Notice before me under the Act. Given the above, the hearing continued with consideration of the landlord's claim only.

I have reviewed all evidence before me that met the requirements of the Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Counsel submitted that in addition to the rent owed for September 2019, the tenant owes a total of \$7,800.00 in unpaid rent for the months of September, October, November and December of 2019, in addition to January 2020. As a result, I amend the landlord's application to \$7,800.00 in unpaid rent and loss of rent as I find that such an amendment under section 64(3)(c) of the Act does not prejudice the tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement.

In addition, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. Any orders will be emailed to the landlord for service on the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on the 10 Day Notice?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on October 1, 2018. The parties agreed that monthly rent is \$1,600.00 per month and is due on the first day of each month. The landlord continues to hold the tenant's security deposit of \$800.00, which has accrued no interest to date. Counsel stated that the landlord would like to offset any monetary claim with the tenant's security deposit.

A copy of the 10 Day Notice was submitted in evidence. The tenant confirmed that they were served with the 10 Day Notice on August 13, 2019. The effective vacancy date listed on the 10 Day Notice was August 20, 2019. The tenant did not apply to dispute the 10 Day Notice until November 10, 2019, which is after the effective vacancy date listed on the 10 Day Notice. The tenant did not dispute the 10 Day Notice within 5 days of August 13, 2019, nor did the tenant pay August 2019 rent until October 26, 2019.

Counsel stated that as of the date of the hearing, the tenant owes a total of \$7,800.00 in unpaid rent for September, October, November and December of 2019, and January 2020. Counsel

stated that this amount incorporates a \$200.00 payment that the tenant stated that they paid. The tenant continues to occupy the rental unit.

The tenant failed to provide any other documentary evidence of any other payments since September 2019, other than the \$200.00 payment described above.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, I find the tenant failed to dispute the 10 Day Notice or pay August 2019 rent within 5 days of receiving the 10 Day Notice on August 13, 2019. Therefore, pursuant to section 46 of the Act, I find the tenant is conclusively presumed under the Act to have accepted the effective vacancy date which automatically corrects under section 53 of the Act to August 23, 2019. Therefore, I find the 10 Day Notice valid, as it is signed and dated by the landlord and I find the tenancy ended on August 23, 2019.

Given the above and pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Based on the testimony of the parties, I find the tenant owes a total of **\$7,800.00** in unpaid rent and loss of rent for the months of September, October, November and December of 2020 as claimed, plus January 2020 rent. I find this amount includes the \$200.00 payment described above. As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act.

I find the landlord has established a total monetary claim of **\$7,900.00** pursuant to section 67 and 72 of the Act. I authorize the landlord to retain the tenant's full \$800.00 security deposit in partial satisfaction of their monetary claim, pursuant to sections 38, 67 and 72 of the Act. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$7,100.00.

Conclusion

The tenant's application is dismissed, without leave to reapply, due to a service issue as noted above.

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with

the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended August 23, 2019.

The landlord has established a total monetary claim of \$7,900.00 pursuant to section 67 and 72 of the Act. I authorize the landlord to retain the tenant's full \$800.00 security deposit in partial satisfaction of their monetary claim, pursuant to sections 38, 67 and 72 of the Act.

The landlord has been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$7,100.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties as noted above.

The order of possession will be emailed to the landlord only for service on the tenant.

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: January 9, 2020

Residential Tenancy Branch