



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 CNC / CNR / FFL OPRM-DR

Introduction

This hearing dealt with three applications (one made by the landlord and two made by the tenants) pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application (file number 11061092) was initially brought by way of a direct request but was subsequently scheduled for a participatory hearing. In it, the landlord seeks:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$575 pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenants pursuant to section 72.

The tenants’ first application (file number 11060585) is to cancel landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**10 Day Notice**”) pursuant to section 46.

The tenant’s second application (file number 11058452) is to cancel the landlord’s One Month Notice to End Tenancy for Cause (the “**One Month Notice**”) pursuant to section 47.

File 11058452 previously came to a hearing on January 13, 2020. At that hearing, I ordered that it be adjourned and be heard with the other two applications today. An interim decision was issued following the January 13, 2020 hearing, setting out my reasons for adjourning.

Tenant RO attended the hearing on behalf of herself and tenant CP. The landlord was represented by its office manager (“**KM**”). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Documents

KM testified that the tenants were served with the notice of dispute resolution form and supporting evidence package via registered mail on December 20, 2019. KM provided two Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The Canada Post tracking system indicates that the packages were signed for by tenant CP. RO testified that neither she nor CP received the landlord's documents.

This issue was brought to my attention at the January 13, 2020 hearing, and at that hearing I asked (although I did not order) that the landlord to email the tenants the landlord's documents by 4:00 pm January 13, 2020. KM agreed that she would do this. At this hearing, RO testified that the landlord did not email the documents to the tenant until January 20, 2020 at 9:05 am (less than 30 minutes before this hearing). KM agreed that this was the case.

Section 88 and 89 of the Act allow service of documents by registered mail. Section 90 of the Act states that documents sent by registered mail are deemed served five days after they are sent. There is no requirement in the Act for the tenants to confirm that they have received the documents.

As the Canada Post tracking shows that the landlord's documents were signed for, and as KM emailed the documents to the tenants in advance of the hearing (despite not doing so by the agreed to, although not ordered, time), I find that the landlord's documents have been served in accordance with the Act, and that the tenants are deemed to have received them on December 25, five days after they were mailed by the landlord.

RO testified that she was not sure if she served the landlord with the notice of dispute resolution form and supporting evidence package. KM testified that the tenants served the landlord with the notice of dispute resolution form, but not any documentary evidence.

I reviewed the tenants' documentary evidence, which consisted of two pages of bank statements, showing a payment history which corroborated the payments set out in the landlord's ledger (which the landlord submitted into evidence). I noted this to KM, and on this basis, she agreed that the tenants' documentary evidence could be deemed served and admitted into evidence at the hearing.

Preliminary Issue – One Month Notice

At the outset of the hearing, KM advised me that the landlord was withdrawing the One Month Notice and agreed that it should be cancelled. Accordingly, I order that the One Month Notice is cancelled. The balance of this decision will address the 10 Day Notice, and the tenant's application to cancel it.

Preliminary Issue – Amendment of Landlord's Claim

At the hearing KM sought to amend the landlord's application to include a claim for January 2020 rent in the amount of \$1,275 which she testified remains outstanding.

Rule of Procedure 4.2 states:

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.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for January 2020 rent (\$1,275).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession for unpaid rent;
- 2) a monetary order in the amount of \$1,850; and
- 3) recover its filing fee from the tenants?

Are the tenants entitled to:

- 1) the cancellation of the 10 Day Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 1, 2019. Monthly rent is \$1,275 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$637.50. The landlord still retains this deposit. The tenants still reside in the rental unit.

KM testified that the tenants did not pay any rent on December 1, 2019. She testified that, as a result, the landlord served the tenants with the 10 Day Notice on December 5, 2019 by posting it on the door of the rental unit.

RO confirmed the tenants were served with the 10 Day Notice as described by KM. She also agreed that the tenants did not pay any rent on December 1, 2019, but that they paid \$700 to the landlord representing a partial payment of rent on December 9, 2019. KM confirmed this.

RO testified that the tenants contacted social assistance once they were served with the 10 Day Notice but were told that they would not receive assistance. RO testified that social assistance told them that they contacted the landlord, who advised them that the tenants would be evicted any even if they paid the rent. RO provided no corroboration of this (for example, a letter or email from the social assistance agency the tenants contacted).

KM testified that the tenants have not paid any rent for the month of January 2020. RO agreed.

KM argued that should the landlord be successful in obtaining an order of possession against the tenants that it be effective two days after its service on the tenants. RO requested that an order of possession be effective five days after service on the tenants.

Analysis

In accordance with sections 88 and 90 of the Act, I find that the tenant was served with the 10 Day Notice on December 8, 2019, three days after it was posted on the door of the rental unit.

Based on the testimony of RO and KM, I find that the tenants were obligated to pay month rent of \$1,275 on the first of each month. I find that the tenants are currently in arrears of \$1,850, representing all of January 2020 rent, and \$575 of December 2019 rent.

Section 26 of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, December 18, 2019.

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Therefore, I find that the landlord is entitled to an order of possession and a monetary order of \$ 1,850 for unpaid rent owed by January 1, 2020 as claimed by the landlord.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for their application.

Pursuant to section 72(2) of the Act, I find the landlord is entitled to retain the security deposit of \$637.50 in partial satisfaction of the amount owed for unpaid rent by the tenant.

I find that the tenants were put to unnecessary work and stress by the landlord's issuance and subsequent withdrawal at the hearing of the One Month Notice.

Additionally, I note that KM did not email the landlord's documents to the tenants on January 13, 2020, as she agreed she to do at the January 13, 2020 hearing. I acknowledge that I did not order her to do so (as to have done so would be have implied that the service by registered mail was not effective). However, KM was aware of RO's position that they had not been received the landlord's documents and had agreed to email them to the tenants the same day of the hearing. I expect parties to follow through on any agreements made at a hearing. I am unaware if KM's failure to follow through on this agreement in a timely manner caused any hardship on the tenants, although I could imagine that it might have.

Keeping the aforementioned in mind, I find that it is appropriate to accede to the request of the tenants and issue the order of possession to the landlord effective five days after the landlord serves it served on them.

Conclusion

I order that the tenants pay the landlord \$ 1,312.50, representing the following:

Outstanding rent	\$1,850.00
Credit for retaining security deposit	-\$637.50
Filing Fee	\$100.00
Total	\$1,312.50

Should the tenants fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

I order that the tenants provide the landlord with vacant possession of the rental unit within five days after service of this order on the tenant. Should the tenants fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The landlord is provided with these orders in the above terms and must serve the tenants with these orders as soon as possible.

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: January 20, 2020

Residential Tenancy Branch