



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 OPR-DR, OPRM-DR, FFL

Introduction

On March 19, 2020, the Landlord applied for a Direct Request proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On April 3, 2020, this Application was set down for a participatory hearing on May 25, 2020 at 11:00 AM.

The Landlord attended the hearing with P.V. attending later as counsel for the Landlord. However, the Tenant did not attend the 25-minute hearing. The Landlord provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to the Tenant by registered mail on April 6, 2020 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed, solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on December 1, 2019. Rent was currently established at \$1,690.00 per month and was due on the first day of each month, despite the written tenancy agreement not stipulating this date. A security deposit of \$845.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He advised that the Tenant paid rent on December 1, 2019 in full and then paid \$1,500.00 only on January 1, 2020. He stated that the Tenant was in arrears for the balance of January 2020 rent of \$150.00 and he then did not pay February 2020 rent either. Thus, the Landlord served the Notice to the Tenant by posting it on the Tenant's door on February 2, 2020. The Notice indicated that \$1,690.00 was due on February 2, 2020. As well, it indicated that the effective end date of the tenancy was February 12, 2020.

He also stated that the Tenant did not pay rent for March, April, or May 2020 either. As a result, the Landlord is seeking compensation for rent arrears for January 2020 outstanding rent plus, February, March, April, and May 2020 rent, totalling **\$6,910.00**.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

With respect to the validity of the Notice, I find it important to note that the tenancy agreement did not stipulate what date rent was due, but the Landlord indicated on the Notice that rent was due on February 2, 2020. Furthermore, the Notice cannot be served on the same date as rent is due as it would not yet be considered late in that instance. Contrary to the date that rent was due that was indicated on the Notice, the Landlord testified that rent was always due on the first day of each month.

Policy Guideline # 11, regarding *Amendment and Withdrawal of a Notice to End Tenancy*, states that “In determining if a person should have known particular information that was omitted from a notice to end tenancy, an arbitrator may consider whether a reasonable person would have known this information in the same circumstances. In determining whether it is reasonable in the circumstances to amend the notice, an arbitrator may look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.”

Based on the undisputed, solemnly affirmed testimony from the Landlord, I am satisfied that December’s rent and January’s partial payment of rent were both paid on the first day of the month. Given this, despite the tenancy agreement not indicating what date rent was due, I am satisfied that it is reasonable to conclude that rent was due on the first day of each month. Consequently, I am satisfied that the Landlord simply made an error on the Notice and that the Notice can be amended to reflect the correct date of when February 2020 rent was due. I find it important to note that had the Tenant believed that this was a fatal flaw on the Notice, the Tenant could have attempted to dispute the Notice accordingly.

As a result, I have reviewed the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenant was served the Notice on February 2, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days after being deemed to have received the Notice to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the fifth day after being deemed to have received the Notice fell on February 10, 2020, the Tenant must have paid the rent in full or disputed the Notice by this date at the latest. The undisputed evidence is that the Tenant did not pay the rent or make an Application, and there is no evidence before me that permitted the Tenant to withhold the rent.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I am satisfied that the Tenant has conclusively presumed to have accepted the Notice. Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award for unpaid rent. I grant the Landlord a monetary award in the amount of **\$6,910.00** for the arrears of the balance of January 2020 rent, and February to May 2020 rent.

As the Landlord was successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Remaining outstanding January 2020 rent	\$150.00
Outstanding February 2020 rent	\$1,690.00
Outstanding March 2020 rent	\$1,690.00
Outstanding April 2020 rent	\$1,690.00
Outstanding May 2020 rent	\$1,690.00

Recovery of filing fee	\$100.00
Security deposit	-\$845.00
TOTAL MONETARY AWARD	\$6,165.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is also provided with a Monetary Order in the amount of **\$6,165.00** 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, 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: May 25, 2020

Residential Tenancy Branch