



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1063263 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR, MNDCL-S, MNRL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An Order of Possession for unpaid Rent pursuant to sections 46 and 55;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for rent pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m.

The landlords attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlords testified the Notice of Dispute Resolution Proceedings was served to the tenant by email on June 8, 2020 at 1:15 a.m. in accordance with the Director's order regarding service of documents made on March 30, 2020. The landlords testified the email address was the same email address provided to them on a previous Application for Dispute Resolution filed by the tenant. The file number of the previous decision is recorded on the cover page of this decision. Based on this testimony, I am satisfied the tenant was served with the Application for Dispute Resolution on June 8, 2020.

Preliminary Issue

The landlord's application for an Order of Possession is based on the same 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant sought to cancel in his application. I reviewed the decision made in the previous application and determined that on June 16th, the previous arbitrator dismissed the tenant's application with leave to reapply as no parties attended the hearing. That arbitrator made no findings on the merits of the tenant's application and noted that his decision did not extend any applicable deadlines under the *Act*.

The landlords testified they were not subsequently served with any Applications for Dispute Resolution to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. As such, I continued with the landlord's application for an Order of Possession, undisputed.

Preliminary Issue

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure states that in circumstances that can be reasonably 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. The landlord sought additional compensation for June rent and I allowed the landlord to amend his application to recover June rent in accordance with Rule 4.2.

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 be compensated for interest on the unpaid rent?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on March 14, 2017, becoming month to month at the end of the term, on March 31, 2018. Rent is set at \$4,000.00 per month, payable on the first day of the month. A security deposit of \$2,000.00 was collected from the tenant which the landlord continues to hold.

The landlords provided the following undisputed testimony. The tenant stopped paying rent in February, 2020. On March 12, 2020, the landlord, VP served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door. The co-landlord, MD witnessed the service of the Notice. A copy of the Notice

dated March 12, 2020 was provided as evidence. The Notice states the tenant failed to pay rent in the amount of \$4000.00 that was due on 1/02/2020 and \$4000.00 that was due on 1/03/2020.

The landlords received \$4,000.00 on May 20th, which the landlords applied to the outstanding arrears in rent for February, 2020. No further rent was received by the tenant and the landlords seek compensation for March, April, May and June in the amount of \$4,000.00 for each month. The landlords did not provide submissions regarding their claim for interest on the outstanding arrears.

Analysis – Order of Possession

I am satisfied the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 17, 2020 five days after it was posted to the tenant's door in accordance with sections 88 and 90 of the *Act*.

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, 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.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice, in this case, by March 27, 2020. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on March 27, 2020, the corrected effective date of the notice. As the effective date on the Notice has passed and the tenant continues to reside in the rental unit, and the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenant.

Analysis – Monetary Order

Section 26 of the *Act* is clear, 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 the tenant did not pay rent for the period from March to June, 2020 and did not have any right to deduct any portion of the rent. The tenant did not comply with section 26 of the *Act*.

I accept the landlord's undisputed testimony that the tenant was obligated to pay \$4,000.00 per month rent from March to June, 2020, a span of four (4) months and failed to do so.

Section 7(1) of the *Act* states, "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." Accordingly, I award the landlord a monetary order in the amount of **\$16,000.00** for the period of four months.

The landlords did not provide any testimony regarding his claim for interest on the outstanding arrears. No documents were supplied to satisfy me how the \$600.00 figure for interest was arrived at and no evidence of an agreement that the tenant would compensate the landlords for interest in the event of missed payments was produced. For these reasons, this portion of the landlord's claim is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$16,000.00**. 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: June 29, 2020

Residential Tenancy Branch