



Dispute Resolution Services

Page: 1

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

OPR, MNRL-S, FFL

Introduction

On August 14, 2020, the Landlord applied for a Dispute Resolution 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 unpaid rent pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On August 18, 2020, this Application was set down for a participatory hearing on October 1, 2020 at 9:30 AM.

G.M., C.S., and L.B. attended the hearing as agents for the Landlord. However, the Tenant did not attend at any point during the 26-minute hearing. All in attendance provided a solemn affirmation.

G.M. advised that the Notice of Hearing and evidence package was served to the Tenant by hand on August 20, 2020 and a signed proof of service form was submitted to corroborate this service. Based on this undisputed evidence, and 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 apply the security deposit towards these debts?

- Is the Landlord entitled to recovery of 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 agents advised that the tenancy started on January 1, 2019, that rent was currently established at \$1,425.00 per month, and that it was due on the first day of each month. A security deposit of \$712.50 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

G.M. advised that the Notice was served to the Tenant by posting it to his door on March 13, 2020. A signed proof of service form was submitted to corroborate this service. The Notice indicated that \$3,450.82 was outstanding on March 1, 2020 and the effective end date of the tenancy was noted as March 26, 2020.

C.S. advised that as per the Tenant Ledger that was submitted as documentary evidence, the Tenant first started not paying the rent on November 1, 2019. As well, he did not pay the rent in full for December 2019, January 2020, February 2020, or March 2020. He made payments of \$700.00 on December 5, 2019, \$700.00 on January 7, 2020, \$900.00 on January 27, 2020, \$700.00 on February 11, 2020, and \$750.00 on February 24, 2020. The \$3450.82 in arrears is the total rent outstanding, less these payments; however, it included a monthly parking fee of \$15.00, which was not a part of the rent but part of a separate parking agreement. The actual amount of rental arrears from November 2019 to March 2020 is \$3,375.82.

She stated that the Tenant has not yet paid any money for April to September 2020 rent or for October 2020 rent; however, he paid \$85.00 and \$1,425.00 on June 22, 2020, for which he was given a receipt for use and occupancy only. According to the ledger, the Tenant is in arrears for rent only, including October 1, 2020 rent, in the amount of \$11,855.82.

G.M. advised that she spoke with the Tenant about applying for rental supplements; however, the Tenant had avoided discussing any issues with her. There were no payment plans discussed or implemented to pay back any rental arrears.

The Landlord is seeking a total monetary award in the amount of **\$3,375.82** for rent arrears from November 2019 to March 2020; however, they would ideally like a Monetary Order for all the rent owing up to the date of this hearing, totalling \$11,855.82.

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.

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.

Section 46 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.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on March 16, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days 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 fell on Monday March 16, 2020, the Tenant must have paid the rent in full or disputed the Notice by this day 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 outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Moreover, the Tenant did not establish that he had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute the Notice. 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 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 rent arrears stemming from November 2019 up until September 30, 2020. Therefore, I grant the Landlord a monetary award in the amount of **\$9,802.50**.

As the Landlord was successful in this Application, I find that the Landlord 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 keep the security deposit in partial satisfaction of the debts.

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

November 2019 rent	\$1,425.00
December 2019 rent	\$1,425.00
December 2019 rent partial payment	-\$700.00
January 2020 rent	\$1,425.00
January 2020 rent partial payment	-\$700.00
January 2020 rent partial payment	-\$900.00
February 2020 rent	\$1,425.00
February 2020 rent partial payment	-\$700.00
February 2020 rent partial payment	-\$750.00
March 2020 rent	\$1,425.00
April 2020 rent	\$1,425.00
May 2020 rent	\$1,425.00
June 2020 rent	\$1,425.00
June 2020 rent partial payment	-\$85.00
June 2020 rent partial payment	-\$1,425.00
July 2020 rent	\$1,425.00

August 2020 rent	\$1,425.00
September 2020 rent	\$1,425.00
Security deposit	-\$712.50
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$9,802.50

Conclusion

I grant an Order of Possession to the Landlord effective **2 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 **\$9,802.50** 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: October 2, 2020

Residential Tenancy Branch