



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEE HOI BROTHERS CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on September 24, 2020 the Dispute Resolution Package and evidence that was submitted to the Residential Tenancy Branch by the Landlord was sent to the Tenant, via registered mail, at the rental unit. The Agent for the Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

As the Application for Dispute Resolution was properly served to the Tenant, the hearing proceeded in the absence of the Tenant and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord affirmed that he would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from October and November of 2020. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute

Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or unpaid utilities?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on February 01, 2014;
- at the end of the tenancy the rent was \$1,139.00;
- rent is due by the first day of each month;
- the Tenant still owes \$839.00 in rent for April of 2020, \$839.00 in rent for May of 2020, \$839.00 in rent for June of 2020; \$497.30 in rent for July of 2020, \$497.30 in rent for August of 2020, \$1,139.00 in rent for September of 2020, \$1,139.00 in rent for October of 2020, \$1,139.00 in rent for November of 2020;
- No repayment plan for the outstanding rent has been served to the Tenant;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 10, 2020, was posted on the door of at the rental unit on September 02, 2020.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,139.00 by the first day of each month and that he has not paid any of the rent that was due for September, October, or November of 2020. and that the Tenant has not paid rent for March or April of 2019. As the Tenant was required to pay rent on September 01, 2020, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,139.00 in rent for September of 2020.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 02, 2020.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy September 5, 2020.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on September 05, 2020, I find that the earliest effective date of the Notice was September 15, 2020.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was September 15, 2020.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on September 15, 2020 and that he should have vacated the rental unit. As the rental unit has not been vacated, I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on September 15, 2020, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between September 15, 2020 and September 30, 2020, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must compensate the Landlord for the month of October of 2020, in the amount of \$1,139.00, as he remained in possession of the rental unit for that month.

I find that the Tenant must compensate the Landlord for the 16 days in November of 2020 that he remained in possession of the rental unit, at a daily rate of \$37.97, which equates to \$607.52. I am unable to award compensation for the remainder of November, as it is entirely possible the Tenant will vacate the rental unit today. The Landlord retains the right to seek compensation for further lost revenue/unpaid rent.

The *COVID-19 Related Measures Act* (C19 Act) allows for regulations made under section 10.1 of the Emergency Program Act (EPA) to remain in force for up to one year after July 10, 2020. The *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* (C19 Tenancy Regulation), was made under sections 10.1 and 10.2 of the EPA on August 14, 2020.

The C19 Tenancy Regulation requires landlords to provide tenants with a repayment plan for “affected rent”, which must have the following terms:

1. The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
2. The payment of the unpaid affected rent must be in equal installments;
3. Each installment must be paid on the same date that rent is due under the tenancy agreement; and
4. The date of the first installment must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.

“Affected rent” is rent that becomes due to be paid by a tenant in accordance with a tenancy agreement between March 18, 2020 and August 17, 2020. In these circumstances all of the overdue rent from the period between April 01, 2020 and August 31, 2020 is “affected rent”.

As the Landlord has never provided the Tenant with a repayment plan for the “affected rent”, I dismiss the Landlord’s application for a monetary Order for any unpaid rent from April 01, 2020 to August 31, 2020, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution for the affected rent, if the Tenant fails to comply with the terms of a valid repayment plan that is served to him.

I find that the Landlord’s application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,985.52, which includes \$2,885.52 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,985.52. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: November 16, 2020

Residential Tenancy Branch