



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:

OPR-M-DR, OPR-DR, CNC, CNR, PSF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities and a monetary Order for unpaid rent or utilities.

The Agent for the Landlord stated that on September 30, 2020 the Dispute Resolution Package was sent to the Tenant, via regular mail. When a landlord files an Application for Dispute Resolution, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89 of the *Residential Tenancy Act (Act)*. Section 89 of the *Act* does not permit a party to serve an Application for Dispute Resolution by regular mail.

On the basis of the undisputed evidence, I find that the Landlord's Application for Dispute Resolution was not served in accordance with section 89 of the *Act*. I therefore find I am unable to proceed with the Landlord's Application for Dispute Resolution, in the absence of the Tenant. The Landlord's Application for Dispute Resolution is dismissed, with leave to reapply.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, and for an Order requiring the Landlord to provide the Tenant with services or facilities.

The Agent for the Landlord stated that the Landlord received the Tenant's Application for Dispute Resolution in the mail. As the Landlord received the Tenant's Application for Dispute Resolution, I am able to proceed with the Tenant's Application for Dispute Resolution in the absence of the Tenant.

In September of 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via regular mail, on September 30, 2020. On the basis of the undisputed evidence, I find that this evidence was served to the Tenant in accordance with section 88 of the *Act*, and it was accepted as evidence for these proceedings.

In September of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Landlord by the Tenant. As the evidence was received by the Landlord, it was accepted as evidence for these proceedings.

Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside?

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Is there a need to issue an Order requiring the Landlord to provide services or facilities?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on December 01, 2019;
- the Tenant was required to pay monthly rent of \$1,600.00 by the first day of each month;
- the Tenant has never paid the rent that was due on September 01, 2020;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 27, 2020, was posted on the door of the rental unit on September 17, 2020; and
- the Tenant is still living in the rental unit.

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 \$1,600.00 by the first day of each month and that the Tenant has not paid 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 for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 17, 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 Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on September 20, 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 Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on September 20, 2020, I find that the earliest effective date of the Notice was September 30, 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 for Unpaid Rent or Utilities was September 30, 2020.

As the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and the Tenant has still not paid the outstanding rent for September of 2020, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. As the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 55 of the *Act* requires me to grant a landlord an Order of Possession if I dismiss a tenant's application to cancel a notice to end tenancy and that notice to end tenancy complies with section 52 of the *Act*. As I have dismissed the Tenant's application to

cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, and that Notice complies with section 52 of the *Act*, I grant the Landlord an Order of Possession.

As I have determined that the Tenant must vacate the rental unit on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find there is no need to consider the Tenant's application to cancel a One Month Notice to End Tenancy for Cause.

As I have determined that the Tenant must vacate the rental unit on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find there is no need to consider the Tenant's application for an Order requiring the Landlord to provide services or facilities.

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.

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 13, 2020

Residential Tenancy Branch