



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, FFL

Introduction

On October 7, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

E.H. attended the hearing as an agent for the Landlord; however, the Tenant did not make an appearance at any time during the nine-minute hearing. All parties in attendance provided a solemn affirmation.

She advised that the Tenant was served the Landlord’s Notice of Hearing and evidence package by registered mail on October 28, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on October 29, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been served the Landlord’s Notice of Hearing and evidence package. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

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?

- 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.

E.H. advised that the tenancy started on June 1, 2020, that rent was established at an amount of \$1,050.00 per month, and that it was due on the first day of each month. A security deposit of \$525.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

She stated that the Notice was served to the Tenant by posting it to her door on September 21, 2020 and a signed proof of service document was submitted as well. The Notice indicated that \$1,050.00 was due on September 1, 2020. It also stated that the effective end date of the tenancy was October 3, 2020.

She submitted that the Tenant did not pay September 2020 rent at all. The Tenant paid October 2020 rent on October 9, 2020 and November 2020 rent on November 4, 2020. Receipts for use and occupancy were provided for these payments. The Tenant has yet to pay December 2020 rent. As the Tenant has not paid September 2020 rent or disputed the Notice, the Landlord is seeking an Order of Possession.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

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 deemed to have received the Notice on September 24, 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 Tenant received the Notice on September 24, 2020, she must have paid the rent in full or disputed the Notice by September 29, 2020, at the latest. The undisputed evidence is that the Tenant did not pay the full amount of rent or dispute the Notice.

Consequently, I am satisfied that the Tenant did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenant did not pay the rent in full and as she had no authority to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

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*. Consequently, the Order of Possession takes effect **two days** after service on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, the Landlord may recover this amount from the security deposit.

Conclusion

Based on the above, I uphold the 10 Day Notice to End Tenancy for Unpaid Rent and 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.

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: December 17, 2020

Residential Tenancy Branch