



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

Introduction CNR, OPR-DR-PP, OPRM-DR, FFL

The tenant sought an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (“NTE”) pursuant to section 46 of the *Residential Tenancy Act* (“Act”). The landlord, in a cross-application, seeks an order of possession and a monetary order for unpaid rent pursuant to sections 55 and 67 of the Act; the landlord also seeks recovery of the application filing fee under section 72 of the Act.

The tenant filed an application for dispute resolution on October 9, 2020 and the landlord filed an application for dispute resolution on October 20, 2020. A dispute resolution hearing was held, by way of teleconference, on Monday, December 21, 2020 at 11:00 AM. Only the landlord’s agent (the “landlord”) attended the hearing and he was given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The landlord confirmed that he had sent copies of the landlord’s documentary evidence to the tenant as required by the *Rules of Procedure*.

Issues

1. Is the tenant entitled to an order canceling the NTE?
2. If not, is the landlord entitled to an order of possession for unpaid rent?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on March 8, 2016 and monthly rent is \$1,201.00, due on the first day of the month. The tenant used to be employed by the landlord as the resident manager and was not required pay a security or pet damage deposit. A copy of the written Residential Tenancy Agreement was submitted into evidence.

On October 8, 2020, the landlord's agent M.L. served the tenant in person with the NTE, a copy of which was also submitted into evidence. A copy of a Rent Repayment Plan was also submitted into evidence, along with a rent ledger showing the unpaid amounts. The landlord gave evidence that the tenant failed to make a required payment (which included arrears) of \$3,499.52 which was due on October 1, 2020. As of today, the landlord testified that the tenant now owes rent arrears in the amount of \$5,151.52.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 46(1) of the Act states that a landlord "may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice."

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the NTE informed the tenant that the NTE would be cancelled if he paid rent within five days of service, which he did not. The NTE also explains that the tenant had five days from the date of service to dispute the NTE by filing an Application for Dispute Resolution, which he did.

The landlord testified, and provided documentary evidence to support his submission, that the tenant did not pay rent when it was due. There is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent.

Taking into consideration all of the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the NTE was issued. Thus, the tenant's application for an order cancelling the NTE is dismissed, without leave to reapply.

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, [. . .] and
- (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the NTE and find that it complies with section 52 of the Act. As an aside, while the tenant's full name was not included in the NTE, a shortened version of the tenant's first name was included, along with the tenant's last name. It is reasonable, I find, for the tenant to have accepted that the NTE was meant for him.

Finally, having dismissed the tenant's application, I grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision and is effective December 31, 2020 at 1:00 PM.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent in the amount of \$5,151.52. The tenant was required to pay rent but failed to do so, the amount of rent is proven, and, the landlord acted swiftly in making an application for dispute resolution which is reasonable in minimizing their loss of rent. Thus, I award the landlord compensation in the amount of \$5,151.52 for unpaid rent.

As the landlord was successful in their application, I award them \$100.00 for the application filing fee, pursuant to section 72 of the Act.

Conclusion

The tenant's application is dismissed, without leave to reapply.

I grant the landlord an order of possession which is effective on December 31, 2020 at 1:00 PM. The order of possession must be served on the tenant no later than December 28, 2020. If the tenant fails to comply with the order of possession the landlord may file and enforce the order in the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$5,251.52, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 21, 2020

Residential Tenancy Branch