



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1094748 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 9, 2020, wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 4, 2020 (the "Notice"). The Landlord also requested recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on January 26, 2021. Only the Landlord's Representative, A.L. called into the hearing. A.L. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:58 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that A.L. and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. A.L. testified that he served the Tenant with the Notice of Hearing and the Application on December 4, 2020 by registered mail. A copy of the registered mail envelope was provided in evidence before me; the tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 9, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent and utilities?
3. Should the Landlord recover the filing fee?

Background and Evidence

A.L. testified that the tenancy began July 1, 2020. Monthly rent was \$990.00. A.L. testified that rent is due on the first of the month.

A.L. stated that the Tenant and a guest appear to be in the rental unit, although they are avoiding any contact with the Landlord.

The Tenant failed to pay the October rent following which the Landlord issued a 10 Day Notice. The Tenant then failed to pay the November rent following which the Landlord issued the Notice which is the subject of the hearing before me. The Notice indicated that the sum of \$1,980.00 was owing for October and November rent.

A.L. testified that he served the Notice on the Tenant by posting to the rental unit door on November 4, 2020.

A.L. confirmed that the Tenant failed to dispute the Notice and failed to pay the outstanding rent.

A.L. stated that the Tenant paid \$750.00 in November and \$650.00 in December. The Tenant then failed to pay anything for January 2021. He testified that the total amount owing for rent as of the date of the hearing was \$2,560.00.

The Tenant also failed to pay the utilities from July of 2020 such that at the time of the hearing the sum of \$450.00 was owing.

Analysis

Based on the documentary evidence, the undisputed testimony of the Landlord's representative, and on the balance of probabilities, I find the following.

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day 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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

A Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As noted during the hearing, there are only four occasions when a Tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenants had no such legal authority to withhold rent.

I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I find the Tenant was served with the Notice on November 7, 2020 (3 days after posting to the door pursuant to section 90 of the *Act*.) I also find that the Tenant did not pay the

outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find the Tenant failed to pay the October, November and December 2020 rent, as well as the January 2021 rent as claimed by the Landlord. I accept the A.L.'s testimony that at the time of the hearing the sum of \$2,650.00 was owing for rent. I therefore find the Landlord has met the burden of proving their monetary claim for unpaid rent and I grant the Landlord **\$2,650.00**.

I also accept the evidence of the Landlord that the Tenant failed to pay the utilities as required by the tenancy agreement such that the sum of **\$450.00** was owing for utilities; I award the Landlord recover of this sum as well.

As the Landlord's application had merit, I grant the Landlord the recovery of the **\$100.00** filing fee.

In furtherance of the above I grant the Landlord a monetary Order pursuant to section 67 of the *Act* for the balance owing by the Tenant to the Landlord in the amount of **\$3,200.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

Conclusion

The Landlord is granted an Order of Possession.

The Landlord is entitled to monetary compensation in the amount of **\$3,200.00** for unpaid rent, utilities and recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 26, 2021

Residential Tenancy Branch