



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 CNR-MT, LRE, OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On November 15, 2020, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*.

On November 20, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent based on the Notice pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant did not attend the hearing at any point during the 10-minute teleconference. K.M. and D.T. attended the hearing as agents for the Landlord. All parties in attendance provided a solemn affirmation.

As the Tenant did not attend the hearing, I dismiss his Application without leave to reapply.

K.M. advised that the Notice of Hearing and evidence package was served to the Tenant on December 14, 2020 by registered mail (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on December 17, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing and evidence package. In addition, 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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- 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.

K.M. advised that the tenancy started on September 1, 2020, that rent was established at an amount of \$1,150.00 per month, and that it was due on the first day of each month. A security deposit of \$575.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that the Notice was served to the Tenant by posting it to his door on November 9, 2020 and a signed proof of service form was submitted to confirm this. The Notice indicated that \$1,150.00 was owing for rent and it was due on November 1, 2020. The effective end date of the tenancy was noted as November 19, 2020.

She stated that the Tenant did not pay November rent at all as he claimed to be out of town and, as a result, he was not able to pay the rent. She also stated that he has not paid any rent since service of the Notice. A copy of the Tenant's rent ledger was submitted as documentary evidence to support this position. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- November 2020 rent: \$1,150.00
- December 2020 rent: \$1,150.00
- January 2021 rent: \$1,150.00
- February 2021 rent: \$1,150.00

Total rental arrears: **\$4,600.00**

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 or Utilities. 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.

The Tenant made this Application to dispute the Notice on November 15, 2020 and he claimed that he was out of town, so he did not "have the notice" and he has not "seen the notice at all." However, I find it important to note that in this Application, he indicated

that he received the Notice on November 9, 2020 and that it was posted to his door. In addition, he submitted a copy of the Notice that he received, to the Residential Tenancy Branch, on November 18, 2020, entitled "Just got back and seen this on my door."

When viewing the Notice, it appears as if the Notice was dated November 19, 2020. However, the "1" appears to be in a slightly different coloured ink, and if the Notice were served on November 19, 2020, this contradicts the above details that the Tenant entered on his Application. Furthermore, had he truly only received the Notice on November 19, 2020, it is not clear to me why he would have made an Application to dispute the Notice on November 15, 2020 or why he would have indicated that he received the Notice on his door on November 9, 2020.

I find that the inconsistencies in the Tenant's Application and in his submitted copy of the Notice cause me to be suspicious that the Tenant has fraudulently attempted to alter the Notice and portray a scenario that did not exist. When these doubts are contrasted with the copy of the Landlord's Notice that indicates that this Notice was served on November 9, 2020, with a signed proof of service form that confirms this, I find I prefer the Landlord's evidence.

As such, the undisputed evidence before me is that the Notice was posted to the Tenant's door on November 9, 2020, so he was deemed to have received the Notice on November 12, 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 was deemed to have received the Notice on November 12, 2020, he must have paid the rent in full or disputed the Notice by November 17, 2020 at the latest. While the Tenant disputed the Notice, as he has not attended the hearing, his Application was dismissed in its entirety.

Regardless, even if the Tenant did attend the hearing, the undisputed evidence is that the Tenant has not paid any rent and he did not have a valid reason or authority under the *Act* for withholding it. Based on the consistent, undisputed evidence before me, I am satisfied that the Tenant did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenants did not pay the rent in full and as he had no

authority to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized his 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.

I also grant the Landlord a monetary award in the amount of **\$4,600.00** for the outstanding rental arrears.

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*, I allow the Landlord to retain the security deposit in partial satisfaction of this debt outstanding.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for November 2020	\$1,150.00
Rental arrears for December 2020	\$1,150.00
Rental arrears for January 2021	\$1,150.00
Rental arrears for February 2021	\$1,150.00
Filing Fee	\$100.00
Security deposit	-\$575.00
Total Monetary Award	\$4,125.00

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$4,125.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: February 5, 2021

Residential Tenancy Branch