



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRAMBLEBUSH FARM LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNRL FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (Act) seeking to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The general manager for the landlord company, RVN (landlord), a witness for the landlord, SW (witness) and the tenant appeared at the teleconference hearing and everyone except the witness gave affirmed testimony. During the hearing the parties were given the opportunity to provide evidence. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that they had received the documentary evidence from the landlord and that they had the opportunity to review that evidence.

Preliminary and Procedural Matters

At the outset of the hearing, and by consent of the parties, the rental unit address was corrected as the landlord had listed his own address in error. The correction was made pursuant to section 64(3)(c) of the Act.

In addition, the landlord confirmed that they do not have an email address. The tenant confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them. As the landlord did not have an email address the decision and orders will be mailed to the landlord.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

The parties agreed that a verbal tenancy was formed and began on or about January 2018. The parties also agreed that monthly rent currently was \$1,850.00 per month and is due on the first day of each month. The parties also confirmed that the tenant continues to occupy the rental unit.

The tenant confirmed receiving the 10 Day Notice for Unpaid Rent or Utilities dated December 10, 2020 (10 Day Notice), which was posted to their door. The tenant also testified that they threw the 10 Day Notice away after pulling it off their door. The tenant confirmed that they did not file a formal application with the Residential Tenancy Branch (RTB) to dispute the 10 Day Notice.

The amount listed as owing on the 10 Day Notice was listed as \$1,850.00 due December 1, 2020. The landlord testified that the tenant has failed to pay rent for December 2020, January 2021, and February 2021 and continues to occupy the rental unit. The tenant confirmed that they have not paid rent for December 2020, January 2021 and February 2021. The tenant also acknowledged their understanding that the tenancy will be ending as result.

The landlord submitted a copy of the 10 Day Notice in evidence, which was completed on the correct form.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice was December 20, 2020. The tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the

tenancy ended on the effective vacancy date of the 10 Day Notice. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective two (2) days after service on the tenant. I find that the tenancy ended on December 20, 2020, which was the effective vacancy date listed on the 10 Day Notice. I find the tenant breached section 26 of the Act, which requires that rent be paid on the date that it is due in accordance with the tenancy agreement, which in the matter before me was confirmed by the parties to be \$1,850.00 due on the first day of each month.

Claim for unpaid rent – As the tenant confirmed not paying rent of \$1,850.00 for the months of December 2020, January 2021 and February 2021 and continues to occupy the rental unit, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of \$5,550.00 comprised of \$1,850.00 owing each of the three months including December 2020, January 2021, and February 2021.

The landlord stated that they do not wish to offset their monetary claim with the security deposit of \$900.00 as the tenant has not vacated the rental unit.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of \$100.00 pursuant to section 72 of the Act.

Monetary Order – I find that the landlord is entitled to a monetary order pursuant to section 67 of the Act in the total amount of **\$5,650.00**, which includes the filing fee and as noted above.

Conclusion

The landlord's claim is fully successful.

The tenancy ended December 20, 2020.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$5,650.00 as indicated above. This order must be served on the tenant and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenant not to breach section 26 of the Act in the future.

This decision will be emailed to the tenant. The decision and orders will be mailed to the landlord as noted above.

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: February 19, 2021

Residential Tenancy Branch