



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1174008 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on November 22, 2020 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

A participatory hearing was convened after the issuance of a December 22, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s Application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s Application to a participatory hearing as they were not satisfied of the service of a complete 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”). The Residential Tenancy Branch scheduled the participatory hearing for March 16, 2021.

After this, the landlord issued a second 10-Day Notice to the tenant on January 6, 2021. They filed an Application after this, via Direct Request, on January 15, 2021 for an Order of Possession for unpaid rent, and the recovery of unpaid rent.

These matters were joined together and proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 16, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord presented that they gave the tenant notice of this dispute resolution hearing by registered mail. This mail included the prepared evidence of the landlord. The landlord submitted a copy of the Canada Post receipt dated January 18, 2021 that shows the tracking number as proof of delivery. From the landlord’s evidence, I am satisfied the landlord served the tenant with notice of this hearing, as per the *Act* s. 89(1)(c).

The tenant had proper notice of this participatory hearing and did not attend or provide documentary evidence in advance.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of the Residential Tenancy Agreement. This shows the start of tenancy date was June 1, 2020. The rent was \$1,100 per month payable on the first of each month. The tenant paid a security deposit amount of \$550 on May 27, 2020.

The landlord applied for an order of possession pursuant to the 10-Day Notice they issued to the tenant on November 9, 2020. That was for the unpaid rent amount of \$1,100, owing as of November 1. The landlord provided evidence that a witness was present and observed them directly placing the document on the door of the rental unit where the tenant resided.

With this November 9, 2020 10-Day Notice, the landlord also applied for a monetary order for \$1,100. The landlord's 'Direct Request Worksheet' shows this amount.

In the hearing, the landlord acknowledged that this November 9, 2020 10-Day Notice was not the entire three-page document when they provided it to the Residential Tenancy Branch with their Application. They stated they only scanned 2 pages of this three-page document in preparation for their Application to be heard by the direct request proceeding. As set out above, with the document incomplete, that shifted the direct request proceeding to a

participatory hearing. Further, in this hearing the landlord stated their intention to withdraw this original Application.

With this in mind, the landlord issued the second 10-Day Notice on January 6, 2021. The landlord thus applies in like fashion for an order of possession.

Over this time through to the hearing date of March 16, 2021, the tenant did not pay monthly rent. By the time of the hearing on March 16, 2021, the amount of rent owing by the tenant was \$4,500 because they continued to reside in the rental unit. For this reason, the landlord amended their Application in the hearing to account for this updated rent amount owing.

In November 2020, the tenant paid \$1,000 toward that full amount of rent then owing, leaving a balance owing of \$100. For each of the months for December through to March 2020, they did not pay any rent amounts, so the total claimed thus included \$1,100 for each of these four months.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and conditions, I am satisfied that the agreement existed and that both parties knew the terms therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the agreement shows the amount of rent and payment period clearly stated.

In the hearing, the landlord disclosed that they did not submit a complete copy of the November 9, 2020 10-Day Notice to the Residential Tenancy Branch. I find the landlord's November 22, 2020 Application is withdrawn for the purposes of this hearing. Given that the tenant did not apply to cancel the November 9, 2020 10-Day Notice, this withdrawal is completed unilaterally.

The *Act* s. 46 states 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.

Following this, s. 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In line with this, s. 46(5) says 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.

Based on the undisputed submissions by the landlord, I find they gave the 10-Day Notice to the tenant on January 6, 2021. The tenant failed to pay the rent owing within the five days granted under s. 46(4) of the *Act*. Considering the document to be deemed served on January 9, 2021, this five-day period expired on January 14, 2021. There is no evidence before me that the tenant applied to cancel this 10-Day Notice within this timeframe.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 16, 2021. In the hearing, the landlord stated they visited the rental unit after receiving no responses to calls or text messages. When they visited, another person was residing in the unit. After further investigation involving the police, the final landlord interaction with the tenant had the tenant uttering threats to the landlord.

The evidence of the landlord on the monetary claim is not disputed; therefore, I find that the tenant is obligated to pay \$4,500, as per the tenancy agreement. The landlord is permitted to amend their claimed amount, in these circumstances that I find were reasonably anticipated, as per Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. This is based on the 10-Day Notice issued by the landlord on January 6, 2021. 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,500, for rent owed from November 2020 through to March 2021. The landlord is provided with this Order 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 s. 9.1(1) of the *Act*.

Dated: March 17, 2021

Residential Tenancy Branch