



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eco-World Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

TT: OLC, CNR, FFT
LL: OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on December 18, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent;
- an order that the Landlord comply with the *Act*; and
- an order granting the recovery of the filing fee

The Landlords’ Application for Dispute Resolution was made on December 29, 2020 (the “Landlords’ Application”). The Landlords initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlords’ Application was scheduled to be heard with the Tenant’s Application. The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant, and the Landlord’s Agent V.Y. attended the hearing at the appointed date and time. At start of the hearing, both parties acknowledged service and receipts of their respective Application packages. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

According to the Residential Tenancy Policy Guideline 27; Small Claims Limit Section 58(2) of the RTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

During the hearing, the Landlord's Agent stated that the current amount of unpaid rent owed by the Tenant is \$61,600.00. The Landlord's Agent stated that she is aware of the small claims limit of \$35,000.00. The Landlord's Agent was offered the opportunity to withdraw their monetary claim in order to pursue the full amount of their claim through the BC Supreme Court. During the hearing, the Landlord's Agent stated that she wished to amend her monetary claim to \$35,000.00 in order for the matter to be decided by the Residential Tenancy Branch. The Landlord's Application was amended accordingly and jurisdiction was accepted.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, pursuant to Section 62 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
5. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
6. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2019. Currently, rent in the amount of \$6,800.00 is due to be paid to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$3,400.00 which the Landlords currently hold.

The Landlord's Agent stated that the Tenant has not paid rent in full since September 2020. The Landlord's Agent stated that she subsequently issued a 10 Day Notice to

End Tenancy for Unpaid Rent in the amount of \$41,200.00, dated December 12, 2020 with an effective vacancy date of December 23, 2020.

The Landlord's Agent stated that she served the 10 Day Notice by Registered Mail on December 12, 2020. The Tenant confirmed receipt on the same day. The Landlord's Agent stated that the Tenant has made no payments towards the outstanding balance of rent owed according to the 10 Day Notice. Furthermore, the Landlord's Agent stated that the Tenant has made no rent payments since the 10 Day Notice was served. The Landlord's Agent stated that the Tenant currently owes rent in the amount of \$61,600 for rent from September 2020 to March 2021. The Landlord provided a detailed rent ledger in support.

The Tenant responded by stating he has suffered financially as a result of the Covid-19 pandemic and also due to health reasons. The Tenant stated that he tried to negotiate with the Landlord, however, was unsuccessful in receiving any financial relief. The Tenant confirmed that he currently owes the Landlords \$61,600.00 in unpaid rent.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the Act 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.

I find that the Landlord served the 10 Day Notice dated December 12, 2020, with an effective vacancy date of December 23, 2020, by Registered Mail. The Tenant confirmed receipt on the same day. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 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. While the Tenant made an Application to cancel the 10 Day Notice on December 18, 2020, during the hearing, the Tenant confirmed that he has not made full rent payments to the Landlords since September 2020 and that currently he owes the Landlord \$61,600 in unpaid rent.

As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme

Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Tenant's Application is therefore dismissed without leave to reapply. As the Tenant was unsuccessful with their Application, I find that they are not entitled to the return of the filing fee.

The parties agreed that the Tenant has not paid rent in the amount of \$61,600.00. The Landlord amended their monetary claim for unpaid rent to come within the small claims limit of \$35,000.00. Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$35,000.00 which is the Small Claims Limit pursuant to Section 58(2) of the Act.

Conclusion

The Tenant breached the tenancy agreement by not paying rent when due.

The Landlords are granted an order of possession, which will be effective **two (2) days** after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$35,000.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 18, 2021

Residential Tenancy Branch