



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1098686 BC LTD. and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

On November 24, 2020, the Landlord made an Application for a Direct Request proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with D.A. attending as an agent for the Landlord. However, the Tenant did not make an appearance at any point during the 12-minute teleconference. All parties in attendance provided a solemn affirmation.

The Landlord advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on December 23, 2020 (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 29, 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 Notice of Hearing and evidence package. As such, 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.

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.

The Landlord advised that the tenancy started on August 1, 2020, that rent was established at an amount of \$2,800.00 per month, and that it was due on the first day of each month. A security deposit of \$1,400.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence. The Tenant's name was noted in the tenancy agreement in both the Landlord and Tenant boxes; however, the Landlord stated that this was an error as the Tenant was the person that filled out the agreement.

He submitted that the Notice was served to the Tenant by being mailed on November 4, 2020. A proof of service form was submitted as documentary evidence. The Notice indicated that \$2,800.00 was owing for rent on November 1, 2020. It also indicated that utilities were owed in the amount of \$93.67 following a written demand on October 26, 2020; however, the Landlord indicated that he was not seeking to enforce this at this time. The effective end date of the tenancy was noted as November 13, 2020.

The Landlord submitted that the Tenant did not pay the rent on November 1, 2020. Thus, the Notice was served. He stated that the Tenant did not dispute the Notice, and he only paid \$1,000.00 towards November 2020 rent, in mid November. As well, he testified that the Tenant has not paid any rent for December 2020, January 2021, February 2021, or March 2021 either. The Tenant did not have any authorization to withhold any amount of rent from November 2020 onwards. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- November 2020 rent: \$1,800.00
- December 2020 rent: \$2,800.00
- January 2021 rent: \$2,800.00

- February 2021 rent: \$2,800.00
- March 2021 rent: \$2,800.00
- Total rental arrears: **\$13,000.00**

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 undisputed evidence before me is that the Tenant was served the Notice on November 4, 2020 by mail. According to Section 46(4) of the *Act*, the Tenant had 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 9, 2020, he must have paid the rent in full by Saturday November 14, 2020 or disputed the Notice by Monday November 16, 2020 at the latest. As the Tenant did not pay the rent in full or dispute the Notice, and as the undisputed evidence is that the Tenant did not have

authorization from the Landlord, or a valid reason under the *Act* to withhold the rent, I find 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 **\$13,000.00** 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 these claims.

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	\$1,800.00
Rental arrears for December 2020	\$2,800.00
Rental arrears for January 2021	\$2,800.00
Rental arrears for February 2021	\$2,800.00
Rental arrears for March 2021	\$2,800.00
Filing Fee	\$100.00
Security deposit	-\$1,400.00
Total Monetary Award	\$11,700.00

Conclusion

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 **\$11,700.00** 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: March 11, 2021

Residential Tenancy Branch