



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 11122792 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR-PP, 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; however, the Tenant did not make an appearance at any point during the 26-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 being posted to the Tenant’s door on or around December 24, 2020. This was posted by the caretaker, with a witness. In addition, pictures were submitted to confirm service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package three days after it was posted. 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 July 1, 2020 when his former caretaker allowed the Tenant to take occupancy of the rental unit. A written tenancy agreement was not completed, and he is not sure if rent was taken for July 2020. He stated that the caretaker's employment ended on June 30, 2020, but this person initiated the tenancy regardless on July 1, 2020. Rent was established at an amount of \$600.00 per month and it was due on the first day of each month. A security deposit was not paid.

He submitted that the Notice was served to the Tenant by being posted to the Tenant's door on October 29, 2020, with a witness. He confirmed that the spelling of the Tenant's name on the Notice, and on this Application, was accurate to the best of his knowledge. The Notice indicated that \$3,000.00 was owing for rent on October 1, 2020. The effective end date of the tenancy was noted as November 10, 2020.

He confirmed that the Tenant did not pay any amount of rent after service of the Notice and that the Tenant did not dispute the Notice either. As well, he testified that the Tenant has not paid any rent for November 2020, December 2020, January 2021, February 2021, or March 2021 either. The Tenant did not have any authorization to withhold any amount of rent. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- July 2020 rent: \$600.00
- August 2020 rent: \$600.00
- September 2020 rent: \$600.00
- October 2020 rent: \$600.00
- November 2020 rent: \$600.00

- December 2020 rent: \$600.00
- January 2021 rent: \$600.00
- February 2021 rent: \$600.00
- March 2021 rent: \$600.00
- Total rental arrears: **\$5,400.00**

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 October 29, 2020 by being posted to the door. 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 1, 2020, he must

have paid the rent in full by or disputed the Notice by Friday November 6, 2020 at the latest. When reviewing the Notice, I find it important to note that the Landlord indicated that \$3,000.00 was in arrears for rent on October 1, 2020. According to his accounting though, only \$2,400.00 was in arrears. In addition, the provincial State of Emergency precluded the Landlord from ending the tenancy with this Notice for affected rent that was owed during the time period from April to August 2020. Therefore, the months of July and August cannot be included on this Notice.

However, despite this amount being incorrect, the undisputed evidence is that the Tenant did not pay any rent, nor did he dispute the Notice. Given 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 by not making any attempts to pay what the Tenant believed to be in arrears as of September 1, 2020, or by disputing the Notice.

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.

With respect to the Landlord's request for a monetary award for the rental arrears, the undisputed evidence is that the Notice of Hearing package was served by being posted to the door. Section 89 of the *Act* sets out the manners with which this package must be served to proceed with being granted a Monetary Order. As this package was served by being posted, contrary to this Section, I dismiss the Landlord's claims for a Monetary Order with leave to reapply.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. I grant the Landlord a Monetary Order in the amount of **\$100.00** to satisfy this debt.

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 **\$100.00** 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 16, 2021

Residential Tenancy Branch