



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1114434 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, OPR, MNRL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An Order of Possession for Cause pursuant to sections 47 and 55;
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55; and
- A monetary order for rent pursuant to section 67.

The tenant attended the hearing and the landlord was represented at the hearing by property manager, NL. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings and stated he did not have any concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

The landlord applied for an Order of Possession for cause under section 47 of the *Act* and acknowledged that he had not served the tenant with a One Month Notice to End Tenancy for Cause until very recently. The landlord acknowledged it was an error to include this issue in his application and he had actually served the tenant with multiple 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. As the landlord did not provide a copy of the One Month Notice to End Tenancy for Cause for this hearing, this issue was dismissed with leave to reapply at the commencement of the hearing.

Issue(s) 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?

Background and Evidence

The landlord gave the following testimony. The tenancy began on June 1, 2020 with rent set at \$1,650.00 per month including utilities paid on the first day of each month. A security deposit of \$825.00 was collected by the landlord which he continues to hold.

On November 4, 2020, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Proof of service of that Notice was provided as evidence, signed by the tenant on November 4th. The landlord testified that the tenant paid November rent more than five days after being served with the notice to end tenancy, some time just before December rent was due.

December rent was not paid until December 7th, but the landlord did not serve the tenant with a notice to end tenancy because the landlord was on vacation in December.

January rent became due on January 1st and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 7th. The tenant signed the proof of service document indicating he received the notice on that date. The landlord testified that the tenant paid the January rent six days later, on January 13th by e-transfer. The landlord testified that the tenant has not paid rent for February or March, 2021.

The tenant gave the following testimony. He acknowledges he didn't pay January rent until the sixth day after being served with the notice to end tenancy because he didn't want to send the e-transfer at night. He waited until the next morning to send it to the landlord. The tenant likewise didn't file an application to dispute the landlord's notice to end tenancy, as he has a heart condition and wanted to avoid the stress. The tenant submits that he has done work around the property, including laying bricks to make it wheelchair accessible. He has spent all his savings to be able to move into the rental unit and now does not have any place left to go.

The tenant acknowledges he did not pay rent for February or March because the landlord served him with a notice to end tenancy. He testified he was told to put the rent into another account and not pay the landlord but acknowledges this was a mistake after doing more research on his own. The tenant says he has "done everything backwards".

Analysis

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 pursuant to section 47(1) of the *Act*.

Pursuant to sections 47(4) and (5),

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I am satisfied the tenant was personally served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 7, 2021 in accordance with sections 88 and 90 of the *Act*. The tenant has acknowledged he did not pay the arrears in rent as stated in the notice to end tenancy until January 13, 2021, six days after receiving the notice to end tenancy. As the tenant did not pay the overdue rent or dispute the notice within 5 days of receiving it, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice. In this case, the effective date would be 10 days after being served with the notice, or January 17, 2021.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 7, 2021 is missing the effective date, however in accordance with sections 53 and 68 of the *Act*, I amend the landlord's notice to correct the effective date to January 17, 2021. As the effective date has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure states: in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the landlord to amend his application to seek arrears in rent for February and March 2021.

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a

portion of the rent. The parties acknowledged the tenant has paid rent for January, 2021 however rent for February and March remains unpaid. For the unpaid rent for these two months, I award the landlord compensation in the amount of \$1,650 x 2 = **\$3,300.00** pursuant to sections 26 and 67 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$3,300.00**.

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 25, 2021

Residential Tenancy Branch