



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PBD Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent, DO ("landlord"), attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on January 7, 2021. The landlord provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the Application and evidence on January 12, 2021, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated November 10, 2020, by delivering a copy to the tenant's mail slot. The landlord provided a signed proof of service in their evidentiary materials. In accordance with sections 88 and 90 of the

Act, the 10 Day Notice I find the 10 Day Notice deemed served on November 13, 2020, three days after its delivery.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on December 29, 2016, with monthly rent currently set at \$874.80, payable on the first of the month. The landlord provided copies of text messages to support the tenant's acknowledgement that rent was due on the first of each month. The landlord collected a security deposit in the amount of \$799.80, which the landlord still holds.

The landlord issued the 10 Day Notice on November 10, 2020, indicating an effective move-out date of November 23, 2020. The landlord testified that the tenant made a payment of \$874.80 on November 29, 2020, and made subsequent rent payments for January 2021 through to March 2021, but still owes \$874.80 in outstanding rent. The landlord testified that they have not included the affected rent for the period of March 18, 2020 through to August 17, 2020 in their calculations. The landlord is seeking an Order of Possession, as well as a monetary order for unpaid rent and recovery of the filing fee for this application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 23, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 23, 2020. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not

moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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 landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$874.80. Therefore, I find that the landlord is entitled to \$874.80 in outstanding rent.

The landlord continues to hold the tenant's security deposit of \$799.80. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

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

I allow the landlord to recover the \$874.80 in outstanding rent plus the \$100.00 filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim. I issue a \$175.00 Monetary Order in favour of the landlord for the remaining money owed.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 30, 2021

Residential Tenancy Branch