



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROTHERS HOLDINGS
LTD and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for its application, pursuant to section 72.

The landlord's two agents, landlord SS ("landlord owner") and landlord MH ("landlord property manager"), the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 53 minutes.

The landlord owner confirmed that he owns the landlord company named in this application. He stated that the landlord company owns the rental unit. He said that he had permission to speak on behalf of the landlord company at this hearing. He confirmed that the landlord property manager had permission to speak on behalf of the landlord company at this hearing. The tenant confirmed that her agent, who is her partner, had permission to speak on her behalf at this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they wanted to proceed with the hearing, and they did not want to settle this application. On this basis, I proceeded with the hearing and made a decision regarding this application.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of the tenant's first name. Both parties consented to this amendment during the hearing.

The tenant confirmed receipt of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 4, 2021, ("10 Day Notice") on the same date by way of posting to her rental unit door. The landlord property manager confirmed that the notice was served to the tenant on the above date using the above method. Both parties agreed that the effective move-out date on the notice is January 14, 2021. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on January 4, 2021.

Preliminary Issue - Previous Hearings and Service of Documents

The landlord's application was originally scheduled as a direct request proceeding, which is a non-participatory hearing ("original hearing"). A decision, dated February 25, 2021 ("original decision"), was issued by an Arbitrator for the direct request proceeding. The original decision was based on the landlord's paper application only, with no submissions made by the tenant. The original decision granted the landlord a two-day order of possession ("original order of possession") and a \$590.00 monetary order ("original monetary order") for unpaid rent of \$490.00 and the \$100.00 application filing fee, against the tenant.

The tenant applied for a review of the direct request decision, alleging fraud and indicating that she paid the full rent due. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated March 9, 2021 ("review decision"). As per the review decision, the tenant was required to serve the landlord with a copy of the review decision and the notice of review hearing. The landlord was also required to serve its original application to the tenant.

The landlord property manager confirmed receipt of the review documents and the tenant confirmed receipt of the landlord's original application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the review documents and the tenant was duly served with the landlord's original application.

The tenant stated that she served her rent receipts to the landlord. She said that she emailed it to the landlord's former property manager, who made copies for the tenant and was supposed to distribute it to the landlord. The tenant then claimed that she put it on the landlord owner's truck, posted it to his door, and left it in his mailbox, but she did not know the dates of service. The tenant's agent then claimed that he left it on the landlord's lap in person, but he did not provide a date. Both the landlord owner and the landlord property manager confirmed that they did not receive the tenant's rent receipts.

As the tenant was unable to provide a date of service for leaving a copy in the landlord owner's mailbox, posting it to his door, or serving him in person, I find that the landlord was not served with the tenant's rent receipts. During the hearing, I informed the tenant that email service to a former property manager to distribute the documents to the landlord, who did not appear at this hearing, and leaving a copy on the landlord's truck was not permitted by section 88 of the *Act*. During the hearing, I notified both parties that I could not consider the tenant's rent receipts at this hearing or in my decision.

Preliminary Issue – Increasing Landlord's Monetary Claim

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase its monetary claim to include March 2021 rent of \$1,490.00, which was not yet due at the time the landlord filed its original application in January 2021.

The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. The tenant was aware of and made submissions regarding the landlord's claim for unpaid rent of \$1,490.00 for March 2021 and agreed that it was due. For the above reasons, I find that the tenant had appropriate notice and I heard the landlord's claim for unpaid rent of \$1,490.00 for March 2021.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 15, 2019. Monthly rent in the amount of \$1,490.00 is payable on the first day of each month. A security deposit of \$745.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The landlord's 10 Day Notice was issued to the tenant for unpaid rent of \$1,980.00 due on January 1, 2021.

The landlord property manager stated the following facts. The tenant paid November 2020 rent of \$1,100.00 on November 3, 2020, leaving a balance of \$390.00 owing for rent and \$100.00 for a late fee. The tenant paid full December 2020 rent of \$1,490.00 on December 4, 2020. The tenant paid full January 2021 rent of \$1,490.00 on January 4, 2021. The tenant paid full rent of \$1,490.00 for February and April 2021. The landlord returned the tenant's rent payment of \$1,490.00 for March 2021, demanding instead the outstanding rent of \$390.00 for November 2020 in addition to the rent of \$1,490.00 for March 2021.

The tenant stated the following facts. She did not dispute the landlord's 10 Day Notice because she paid the full rent. She paid \$1,100.00 for November 2020 rent on November 3, 2020, leaving a balance of \$390.00 for rent and a late fee of \$100.00, because it was a hard time for her. She paid \$1,000.00 on December 3, 2020, \$490.00 on December 4, 2020, which should have been applied to November 2020 rent. The tenant overpaid rent of \$1,490.00 on December 4, 2020, even though it was not due, because the landlord was bullying her, and she did not want to lose her home over Christmas. She claimed that she had a rent receipt regarding this amount, but the landlord owner and landlord property manager denied getting this receipt from the tenant, as noted above. The tenant paid full rent of \$1,490.00 for each month in January, February and April 2021 on January 7, February 4, and April 2, respectively. She paid full rent of \$1,490.00 for March 2021 but it was returned to her by the landlord. She is willing to pay this rent again to the landlord but she wants a credit for her overpayment of rent from December 2020.

The landlord seeks an order of possession based on the 10 Day Notice, a monetary order of \$1,880.00 for unpaid rent, which includes \$390.00 for November 2020 rent and \$1,490.00 for March 2021 rent, and the \$100.00 application filing fee.

Analysis

Credibility

Overall, I found the landlord owner and the landlord property manager to be credible witnesses. They provided their testimony in a calm, candid and straightforward manner. They admitted when information was not beneficial to their application, such as when the tenant's March 2021 rent payment was refused by the landlord. They did not argue with or interrupt the tenant and her agent when they were speaking, and they answered questions and made statements in a calm and candid manner.

Conversely, I found the tenant and her agent to be less credible witnesses. I found that they provided their testimony in an upset, agitated, and confusing manner. Their answers changed based on my comments and questions. When I asked questions about service of their rent receipts and rent payment dates, they became very angry and combative, changing their answers frequently to favour their situation. They frequently interrupted and yelled at the landlord owner, the landlord property manager and me. They spoke for the majority of the 53-minute hearing time.

Order of Possession

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case, both parties agreed is on the first day of each month.

I find that the tenant failed to pay the full rent due on January 1, 2020, within five days of receiving the 10 Day Notice. I find that the tenant did not file an application pursuant to section 46(4) of the *Act*, to dispute the notice. I find that the tenant did not pay the full rent owed within five days, nor did she provide an order from an Arbitrator to reduce her rent or use it for emergency repairs.

I find that the tenant failed to pay \$390.00 for November 2020 rent, which was included in the \$1,980.00 unpaid rent due on January 1, 2021, indicated on the 10 Day Notice. Both parties agreed that the tenant paid partial rent of \$1,100.00 late on November 3, 2020, leaving a balance of \$390.00. I find that the tenant's subsequent late rent payments of \$1,490.00 for each month in December 2020, January 2021, February 2021, and April 2021 were paid for those months only, not for the \$390.00 amount owed for November 2020 rent.

On a balance of probabilities, I find that the tenant did not pay an additional \$1,490.00 for rent to the landlord on December 4, 2020, as she did not provide sufficient documentation to confirm same. She did not provide bank documents or other such documentation to confirm same. The landlord denied receiving the tenant's rent receipt from that date, claiming that no such payment was made, and no such receipt was issued to the tenant. I found above that the tenant did not serve the landlord with that rent receipt. Further, I find that it is not reasonable or probable that the tenant would have paid an additional entire month of rent of \$1,490.00, when only \$390.00 was due for November 2020 rent.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on January 14, 2021, 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 January 14, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive its right to enforce the 10 Day Notice or obtain an order of possession by accepting rent payments from the tenant after the effective date of the notice. The landlord continued to issue 10 Day Notices to the tenant for unpaid rent after January 2021, as noted by both parties during the hearing. Both parties stated that they had a future hearing at the RTB in June 2021, regarding another 10 Day Notice. The landlord continued to pursue this application and did not cancel this hearing or withdraw this application. The landlord did not indicate to the tenant that her tenancy was being reinstated. I find that the landlord was entitled to accept rent from the tenant after January 14, 2021, for use and occupancy only.

The original order of possession has already been issued at the original hearing. However, this order is set aside, as the tenant's first name was spelled incorrectly on the original order. Therefore, I issue a new two (2) day order of possession against the tenant with the correct spelling of her first name.

Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

As noted above, I found that the tenant failed to pay \$390.00 for November 2020 rent to the landlord. Therefore, I find that the landlord is entitled to rental arrears of \$390.00 from the tenant for November 2020 rent.

Both parties agreed that the tenant's payment of \$1,490.00 for March 2021 rent was returned to her by the landlord. As noted above, I found that the tenant did not make an additional payment of \$1,490.00 on December 4, 2020 to the landlord, so no amount can be credited to her for March 2021 rent. Therefore, I find that the landlord is entitled to rental arrears of \$1,490.00 from the tenant for March 2021 rent.

I find that the landlord is entitled to rental arrears of \$1,880.00 total for November 2020 and March 2021, from the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$745.00. No interest is payable on the deposit during the period of this tenancy. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$745.00 in partial satisfaction of the monetary award.

I issue a new monetary order in the amount of \$1,235.00 to the landlord. I cancel the original monetary order, dated February 25, 2021, for \$590.00, issued at the original hearing.

Original Decision and Orders

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

I set aside the original decision, original order of possession, and original monetary order, all dated February 25, 2021.

I issue a new two (2) day order of possession and a new monetary order for \$1,235.00, to the landlord against the tenant.

I caution the tenant to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

Conclusion

The original decision, original order of possession, and original monetary order for \$590.00, all dated February 25, 2021, are set aside.

I issue a new 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 issue a new monetary order in the landlord's favour in the amount of \$1,235.00 against the tenant. 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.

I order the landlord to retain the tenant's entire security deposit of \$745.00.

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: April 13, 2021

Residential Tenancy Branch