



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1259303 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-DR, OPRM-DR, FFL**

Introduction

This hearing originated as a Direct Request Proceeding and in an Interim Decision dated January 19, 2021 a participatory hearing was ordered. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:01 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The owner of the landlord company (the "owner") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The owner called his partner as a witness. The partner was affirmed. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the owner, the owner's partner and I were the only ones who had called into this teleconference.

The owner was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The owner testified that they are not recording this dispute resolution hearing.

The Interim Decision states:

**Notices of Reconvened Hearing are enclosed with this interim decision.
The Landlord must serve the Notice of Reconvened Hearing, the interim**

decision, and all other required documents, upon the Tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The owner testified that the above documents were served on the tenant via registered mail on January 22, 2021. A Canada Post registered mail receipt stating same was entered into evidence. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$360.00. Since filing for dispute resolution, the owner testified that the amount of rent owed by the tenant has increased to \$1,440.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$1,440.00. I allowed the landlord 24 hours to upload rent receipts to support the amended claim.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?

2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

The owner provided the following undisputed testimony. The landlord purchased the subject rental property and took possession on September 30, 2020. The tenant lived in the subject rental property at the time of purchase. The previous landlord did not provide the owner with a copy of a tenancy agreement and the owner did not know if one existed. The owner testified that in September of 2020 they asked the tenant to sign a tenancy agreement with the landlord, and the tenant agreed. The owner entered into evidence a tenancy agreement signed by the tenant and the landlord. The tenancy agreement states that this tenancy created by this agreement starts October 1, 2020 and that monthly rent in the amount of \$720.00 is payable on the first day of each month. The tenancy agreement states that the tenant did not pay a security deposit. The owner testified that he does not believe the tenant paid a security deposit to the previous landlord.

The owner testified that the tenant pays rent in cash and that the landlord provides the tenant with a receipt. The owner testified that the following rent payments were made by the tenant:

Date	Rent Owed	Rent Paid	Balance
October 2020	\$720.00	\$720.00	\$0.00
November 2020	\$720.00	\$720.00	\$0.00
December 2020	\$720.00	\$360.00	\$360.00
January 2021	\$720.00	\$600.00	\$480.00
February 2021	\$720.00	\$600.00	\$600.00
March 2021	\$720.00	\$600.00	\$720.00
April 2021	\$720.00	\$0.00	\$1,440.00

The landlord entered into evidence rent receipts from October 2020 to March 2021 which confirm the above testimony.

The owner testified that he and his partner attended at the subject rental property on December 6, 2020 and personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The owner's partner confirmed the above testimony. The owner testified that the tenant opened the door and became hostile. The owner testified that the tenant told them that rent before he signed the tenancy agreement was only \$600.00 and so he would only pay the landlords \$600.00 per month, not the \$720.00 agreed to in the tenancy agreement. The owner entered into evidence a video of this encounter in which the tenant can be heard stating that the landlords were not permitted to raise his rent to \$720.00. In the video the Notice can be seen in the hand of the owner as the parties have this conversation.

The video does not show the owner physically handing the Notice to the tenant. The owner testified that the video was very long and could not all be uploaded in its entirety and the end had to be cut off due to space constraints. The 10 Day Notice was entered into evidence by the landlord; however, the file was corrupted and could not be viewed. I allowed the landlord 24 hours to re-upload the Notice. The Notice dated December 4, 2020 was provided within the required 24 hours and states:

- The date the tenant must move out of the rent unit is: December 15, 2020
- The tenant failed to pay \$720.00 that was due on December 1, 2020. The total of the rent was not paid in full. You have only paid half. \$360.00.

The owner testified that the tenant did not pay the outstanding \$360.00 within five days of the tenant receiving the Notice. The tenant did not file an application for dispute resolution to dispute the Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenant. I accept the owner and his partner's undisputed testimony that they served the tenant in person with the Notice on December 6, 2020, in accordance with section 88 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date

permitted under section 46(1) of the *Act* is December 16, 2020. I find that the corrected effective date of the Notice is December 16, 2020.

Based on the undisputed testimony of the owner, I find that the tenant failed to pay the outstanding rent within five days of receiving the Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the Notice.

In this case, this required the tenants to vacate the premises by December 16, 2020, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the tenancy agreement entered into evidence and the testimony of the owner and his partner, I find that the tenant willingly entered into a new tenancy agreement with the landlord for \$720.00 per month. The terms of the previous tenancy agreement with the previous landlord are not relevant as the tenancy agreements are separate and distinct. The tenant was not required to enter into a new tenancy agreement with the landlord but elected to do so and the tenant is now bound by that agreement.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$720.00 on the first day of each month. Based on the testimony of the owner and the rent receipts entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$1,440.00 in unpaid rent from December 2020 to April 2021.

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, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord in the amount of \$1,540.00.

The landlord is provided with this Order 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: April 16, 2021

Residential Tenancy Branch