



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1284969 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing originated as a Direct Request proceeding. A participatory hearing was ordered in an Interim Decision dated June 15, 2021. 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 9:40a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The Interim Decision stated:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant 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 agent testified that the above documents were posted on the tenant's door on June 18, 2021. A witnessed proof of service document stating same was entered into evidence. I find that the above documents were served in accordance with section 88 of

the *Act*. I find that the tenant was deemed served with the above documents on June 21, 2021 in accordance with section 90 of the *Act*.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she is not recording this dispute resolution hearing.

The agent confirmed the landlord's email addresses for service of this decision and order.

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 tenant, 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 agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. The landlord purchased the subject rental building in January of 2021. The previous landlord did not have tenancy agreements with most of the tenants in the subject rental building, including the tenant in this application for dispute resolution. The landlord does not know when the tenant moved in. Monthly rent in the amount of \$475.00 is payable on the first day of each month.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent, with an effective date of May 10, 2021 (the "10 Day Notice") was posted on the tenant's door on April 23, 2021. A witnessed proof of service document stating same was entered into

evidence. The tenant did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

The agent testified that the rent roll received from the previous landlord stated that the tenant owed \$4,600.00 in unpaid rent. The rent roll was not entered into evidence. The agent testified that the rent roll did not provide details as to how the \$4,600.00 owing in rent was arrived at. The agent testified that the tenant has not paid any rent from January to July 2021.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting. I find that the tenant was deemed served with the 10 Day Notice on April 26, 2021, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Based on the undisputed testimony of the agent, I find that the tenant failed to pay any rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day 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 effective date of the notice.

In this case, this required the tenant to vacate the premises by May 10, 2021, 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.

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 \$475.00 on the first day of each month. Based on the testimony of the agent I find that the tenant did not pay rent in accordance with section 26(1) of the *Act*.

I find that the landlord has not proved the rent arrears owed by the tenant prior to January 2021 as the rent roll was not entered into evidence and the agent did not know how the \$4,600.00 stated as owing, was arrived at. I accept the agent's testimony that the tenant has not paid rent since the landlord purchased the property, that being from

January to July 2021. I find that the landlord is therefore entitled to a monetary award for outstanding rent from January to July 2021 in the amount of \$3,325.00.

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 sections 46 and 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 \$3,425.00.

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: July 19, 2021

Residential Tenancy Branch