



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding West Fraser Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The landlord applied for an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55.

I left the teleconference connection open until 11:27 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by manager DW (the landlord), 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

I accept the landlord's testimony that the tenant was served with the application, interim decision and evidence (the materials) by registered mail on April 14, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover page of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on April 19, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

Is the landlord entitled to an order of possession based on the Notice?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on September 01, 2014. Monthly rent is \$916.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$400.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord stated she served a repayment plan for affected rent in person on December 15, 2020. A copy of the repayment plan was submitted into evidence:

Your rent as of January 1, 2021 has been assessed at \$916.00 as per the Economic Rent put forth by [landlord].

Your request for a repayment plan for back rent will be granted to you. The repayment takes into account the rent arrears from April 2020-August 2020. Total owing for those months is \$1855.00. The repayment of \$93.00 per month must be paid in full by the 1st of each month. If you fail to make any of these payments along with your rent you may be evicted. The payment schedule is attached to this letter.

This will make your January rent to be \$916.00 and February \$1009.00 which will be the first month the repayment schedule will start.

The landlord testified the monthly payment of rent (\$916.00) and the repayment (\$93.00) is \$1,009.00 since February 01, 2021.

The landlord said she served the Notice in person on March 01, 2021. A proof of service (RTB form 34) signed by the tenant confirming receipt of the Notice on March 01, 2021 was submitted into evidence.

The landlord submitted a copy of the March 01, 2021 Notice. The Notice indicates “\$1,009.00 in unpaid rent due on March 01, 2021 + \$9.00 due on February 01, 2021”. The effective date is March 11, 2021.

The landlord affirmed the tenant continues to occupy the rental unit and has not paid rent.

A Direct Request Worksheet (RTB form 46) was provided. It states the tenant paid \$1,000.00 on February 04, 2021 and the tenant is in rental arrears in the amount of \$9.00 for the balance of rent due on February 01, 2021 and \$1,009.00 for rent due on March 01, 2021.

Analysis

Section 04 of Covid-19 Residential Tenancy Act N.2 (the C-19 Regulation) states:

- (1) The following are terms of each repayment plan:
 - (a) the repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
 - (b) the payment of the overdue rent must be in equal instalments;
 - (c) each instalment must be paid on the same date that rent is due under the tenancy agreement;
 - (d) the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.
- (2) A repayment plan must be in writing and include all of the following:
 - (a) the date the repayment period starts as determined under subsection (1) (a);
 - (b) the total amount of the affected rent that is overdue;
 - (c) the date on which each instalment must be paid;
 - (d) the amount that must be paid in each instalment

Residential Tenancy Branch Policy Guideline 52 states:

If the tenancy agreement stipulates that rent is due on the first of each month, the first installment payment would be due on October 1, 2020. Each installment would be due on the first of each month thereafter, and the last installment would be due on July 1, 2021. This means the tenant would pay the unpaid affected rent over 10 installments. If there was \$2,000 of unpaid affected rent, each equal installment would be \$200.

[...]

The C19 Tenancy Regulation requires that the repayment plan be in writing and include:

- The date the repayment period starts;
- The total amount of affected rent that is unpaid;
- The date on which each installment must be paid; and
- The amount that must be paid in each installment.

Based on the landlord's testimony and the December 15, 2020 repayment plan, I find the repayment plan is not in accordance with the C-19 Regulation, as it does not indicate the date on which each instalment must be paid. The payment schedule mentioned in the plan was not submitted into evidence.

Based on the landlord's uncontested testimony and the proof of service (RTB form 34), I find the landlord served the Notice on March 01, 2021 in accordance with section 88(1) of the Act.

Section 3 of Covid19 regulation states:

As an exception to sections 44 (1) (a) (ii) and 46 [landlord's notice: non-payment of rent] of the Residential Tenancy Act and any other provision of the Residential Tenancy Act and the Residential Tenancy Regulation, a landlord must not give a tenant notice to end a tenancy under section 46(1) of the Residential Tenancy Act in respect of affected rent that is unpaid and instead this Division applies.

Section 52 of the Act provides that, in order to be effective, a notice to end tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d)except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1)for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e)when given by a landlord, be in the approved form.

I find the Notice does not indicate the correct amount of unpaid rent, as monthly rent is \$916.00 and the landlord did not provide the tenant with a valid repayment plan. Thus, the Notice does not comply with section 52(d) of the Act.

The Notice was issued for the balance of rent and the repayment plan payment due on February 01, 2021 and the full amount of rent and the repayment plan payment due on March 01, 2021.

Section 68(1) of the Act allows the arbitrator to amend the Notice:

- If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that
 - (a)the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b)in the circumstances, it is reasonable to amend the notice.

Based on the landlord's convincing testimony, the Notice, the tenancy agreement and the Direct Request Worksheet, I am satisfied the tenant was aware the Notice was issued for rent due on March 01, 2021 in the amount of \$916.00. I find it is reasonable to amend the Notice to exclude the repayment plan amount. As such, I amend the Notice to exclude the repayment plan amount of \$93.00 per month. Thus, the Notice is for unpaid rent due on March 01, 2021 in the amount of \$916.00.

I find the corrected Notice is in accordance with section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date and grounds for ending the tenancy and is in the approved form.

The tenant has not disputed the Notice and is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, March 11, 2021.

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order 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.

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 28, 2021

Residential Tenancy Branch