



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNR-DR, OPR-DR

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on April 23, 2021 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent.

This participatory hearing was convened after the issuance of a June 10, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as they were not satisfied with details in the landlord’s application concerning service of the notice to end tenancy.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 9, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent of the landlord (hereinafter the “landlord”) gave the tenants notice of this dispute resolution hearing in person on May 7, 2021. The landlord gave this information in the hearing, and I verified this information appeared in the previous Adjudicator’s decision. The landlord provided that the tenant was still in the rental unit at the time of that service on May 7.

I find the tenant had proper notice of this participatory hearing, as per s. 89(2)(a) of the *Act* and did not attend.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a signed copy of the Residential Tenancy Agreement. This shows the start of tenancy date was January 1, 2021. The rent was \$1,290 per month payable on the first of each month. The tenant paid a security deposit amount of \$645.

The landlord applied for an order of possession pursuant to the 10 Day Notice issued to the tenant on April 3, 2021. This was for the then-unpaid rent amount -- \$1,970 --- that was due on April 1, 2021. The landlord served this to the tenant by attaching the 10-Day Notice to the door of the rental unit. The person who witnessed the landlord do this was present in the hearing and verified that the landlord undertook service in this manner. The landlord submitted a 'Proof of Service' document to show this; however, the portion from the witness giving their account remained blank.

The landlord also applied for a monetary order for \$1,920. The landlord's 'Direct Request Worksheet' shows this accumulating in each consecutive month since the start of the tenancy. This is the same amount indicated on the 10-Day Notice.

In the hearing, the landlord amended the claimed amount to include May through to September 2021. This brings the total claimed amount to \$7,420. They also provided that they retained the security deposit after the tenant has abandoned the unit as of early March 2021 and wished to apply that amount against any amount granted.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and the conditions of how it was started with the tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment.

The Act s. 46 states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Following this, s. 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

With s. 46(5), if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

Based on the undisputed submissions by the landlord, I find they served the 10-Day Notice to the tenant by attaching it to the door of the rental unit on April 3, 2021. The tenant failed to pay the rent owing by April 11, within the five days after the deemed service date of April 6. There is no evidence before me that the tenant disputed the 10 Day Notice within the five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 12, 2020. In line with this, I grant the landlord an Order of Possession.

The evidence of the landlord on the monetary claim is not disputed.

I find that the tenant is obligated to pay \$7,420, as per the tenancy agreement and the testimony of the landlord. The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$7,420. After setting off the security deposit, there is a balance of \$6,775. Although I indicated otherwise in the hearing; here I am authorizing the landlord to keep the security deposit amount and award the balance of \$6,775 as compensation for the January to September 2021 rent amounts.

Conclusion

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.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$6,775, for rent owed from January to September 2021. 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 s. 9.1(1) of the *Act*.

Dated: September 9, 2021

Residential Tenancy Branch