



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

On June 15, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. He did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I find that the Landlord did not submit a written tenancy agreement as required under Policy Guideline #39. Indeed, the Landlord's written submissions confirm that "the previous owner did not have tenancy agreements." Accordingly, I find that the evidentiary material does not comply with the requirements of Policy Guideline #39, giving rise to deficiencies and ambiguities that cannot be addressed during a Direct Request Proceeding.

I have been delegated authority under the *Act* to consider the landlord's application 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 this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:30 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing, represented by owners, MM and TM was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords called a witness, GJ who testified that he served the tenant with the Notice of Reconvened Hearing, the interim decision and all other required documents

by posting them to the tenant's door on June 24, 2021 at approximately 5:00 p.m. Based on the testimony of the landlord's witness, I deem the tenant served with the Notice on June 27, 2021, three days after it was posted to the tenant's door pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the Act?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

The landlord testified that he purchased the property from the previous landlord ("vendor") on January 29, 2021. The vendor assured the new landlord that he had tenancy agreements with the tenants of the building but discovered the vendor did not have any tenancy agreements after the building was sold to the new landlord. The landlord testified that he saw the rent roll for this tenant's unit and that the tenant had consistently paid rent in the amount of \$425.00 per month up until the end of December 2020 but stopped paying rent in January. The tenant has not paid the landlord any rent money since the landlord purchased the building on January 29, 2021. The landlord testified he does not seek arrears for the month of January however he seeks rental compensation from February to October 2021 if he is permitted to amend his claim for arrears.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 23, 2021 by attaching a copy to the tenant's door at approximately 5:30 p.m. A proof of service form was provided as evidence by the landlord, together with a copy of the landlord's notice to end tenancy. The landlords testified that the tenant has not served them with any notices to dispute the landlord's notice to end tenancy since receiving it.

Analysis

I deem the tenant served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 26, 2021, three days after it was posted to the tenant's door pursuant to sections 88 and 90 of the Act.

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - a. pay the overdue rent, in which case the notice has no effect, or
 - b. dispute the notice by making an application for dispute resolution.
- (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
 - a. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - b. must vacate the rental unit to which the notice relates by that date.

Based on the landlord's evidence and the Notice before me, I find that the tenant was served with an effective Notice and did not pay the overdue rent or file an application to dispute it within the 5 days. Therefore, the tenant is conclusively presumed to have accepted the tenancy ended on May 10, 2021, the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the *Act*.

Based on the undisputed testimony of the landlord, I accept that the tenant was obligated to pay monthly rent in the amount of \$425.00. Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. I find that the tenant did not have any right to deduct any portion of the rent. I accept the landlord's testimony that the tenant has not paid rent for the 9 months from February through October. [$\$425.00 \times 9 = \$3,825.00$]. In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the *Act* I find it reasonable to grant the landlord's application to amend the Application for Dispute Resolution to include additional arrears and I award the landlord monetary compensation in the sum of \$3,825.00.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **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 monetary order in the landlord's favour in the amount of **\$3,925.00**.

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*.

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Dated: October 04, 2021

Residential Tenancy Branch