



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

On June 23, 2021, the Landlord made an Application for a Direct Request Proceeding seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was subsequently scheduled to commence via teleconference at 11:00 AM on October 26, 2021.

J.T. and T.V. attended the hearing as agents for the Landlord; however, the Tenant did not attend at any point during the 16-minute teleconference. At the outset of the hearing, I advised the parties that recording of the hearing was prohibited. They were reminded to refrain from doing so and they acknowledged this term. As well, they provided a solemn affirmation.

T.V. advised that he served the Notice of Hearing package to the Tenant by registered mail on July 30, 2021 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, I am satisfied that the Tenant was deemed to have received the Notice of Hearing package five days after it was mailed.

He also advised that he served the Landlord’s evidence package to the Tenant by registered mail on July 16, 2021 (the registered mail tracking number is also noted on the first page of this Decision). This was served with the original Application for the Direct Request proceeding. Based on this undisputed evidence, I am satisfied that the Tenant was deemed to have received the Landlord’s evidence five days after it was

mailed. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

T.V. advised that the tenancy started on December 1, 2020, that rent was currently established at an amount of \$1,350.00 per month, and that it was due on the first day of each month. A security deposit of \$675.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served to the Tenant by posting it to the Tenant's door mail on June 7, 2021. A proof of service form was submitted to corroborate service of the Notice. The Notice indicated that \$1,350.00 was owing for rent on June 1, 2021. The effective end date of the tenancy was noted as June 21, 2021.

He submitted that the Tenant did not pay any rent for June 2021. Thus, the Notice was served. He referenced a Rental Arrears letter, submitted as documentary evidence, to support this position. As well, he stated that the Tenant has not paid any rent since service of the Notice either. He stated that the Tenant did not have any authorization to withhold any amount of rent from June 2021 onwards. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- June 2021 rent: \$1,350.00
- July 2021 rent: \$1,350.00
- August 2021 rent: \$1,350.00
- September 2021 rent: \$1,350.00
- October 2021 rent: \$1,350.00
- Total rental arrears: **\$6,750.00**

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was served the Notice on June 7, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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."*

As the Notice was served on June 7, 2021 by being posted to the door, the Notice was deemed received on June 10, 2021. As such, the Tenant must have paid the rent in full or disputed the Notice by June 15, 2021 at the latest. As the undisputed evidence is that the Tenant did not pay any rent owing or dispute the Notice, and as the Tenant did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized the tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenant is in arrears for the rent up until the date of the hearing, I grant the Landlord a monetary award in the amount of **\$6,750.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for June 2021	\$1,350.00
Rental arrears for July 2021	\$1,350.00
Rental arrears for August 2021	\$1,350.00
Rental arrears for September 2021	\$1,350.00
Rental arrears for October 2021	\$1,350.00
Security deposit	-\$675.00
Filing Fee	\$100.00
Total Monetary Award	\$6,175.00

Conclusion

Based on the above, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$6,175.00** 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: October 26, 2021

Residential Tenancy Branch