



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kim Gin & Sons Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for Cause pursuant to Sections 55 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, FM, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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. The Landlord attended the hearing and was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised FM that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (the "ROP") prohibits the recording of dispute resolution hearings. FM testified that he was not recording this dispute resolution hearing.

FM served the Tenant with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on September 16, 2021 by posting the notice on the Tenant's door. FM provided a proof of service document dated September 16, 2021 signed by his witness. I find this One Month Notice was served according to Section 88(g) of the Act.

FM served the Tenant with the Notice of Dispute Resolution Proceeding package and all his evidence on November 5, 2021 via Canada Post registered mail (the “NoDRP package”). FM referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package for this hearing five days after mailing them on November 10, 2021, in accordance with Sections 88(c), 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for Cause?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

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

This periodic tenancy began on October 1, 2020. Monthly rent is \$1,350.00 payable on the first day of each month. A security deposit of \$675.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons on the One Month Notice to end this tenancy were:

- the Tenant is repeatedly late paying rent; and,
- the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective date on the One Month Notice was October 15, 2021.

At the end of August, it came to the Landlord’s attention that the Tenant has a dog in his rental unit. The Landlord stated that the Tenant was provided a letter on September 1, 2021 that he is not allowed to have a pet in his rental unit pursuant to Section 15 of the tenancy agreement without prior written consent by the Landlord. The tenancy agreement states this is a material term. The Landlord said that he gave the Tenant until September 15, 2021 to resolve the issue. The Tenant has not removed the dog from the rental unit.

The Landlord testified that between January to October of 2021, the Tenant has been late paying rent by at least two weeks in eight of those ten months. The Tenant has not paid rent in November or December 2021 at all. The table below sets out when rent was late or unpaid:

| RENT | Rent Owing | Rent Paid | | O/S Rent |
|----------------|-------------------|------------------|--------------|-----------------|
| December 2020 | \$1,350.00 | \$1,350.00 | 2 weeks late | \$0.00 |
| January 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| February 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| March 2021 | \$1,350.00 | \$1,350.00 | paid on time | \$0.00 |
| April 2021 | \$1,350.00 | \$1,350.00 | paid on time | \$0.00 |
| May 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| June 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| July 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| August 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| September 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| October 2021 | \$1,350.00 | \$1,350.00 | late | \$0.00 |
| November 2021 | \$1,350.00 | \$0.00 | not paid | \$1,350.00 |
| December 2021 | \$1,350.00 | \$0.00 | not paid | \$2,700.00 |

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. As this hearing was conducted pursuant to ROP 7.3, in the Tenant's absence, all the Landlord's testimony is undisputed.

Section 55(2) of the Act reads as follows:

- 55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for*

dispute resolution and the time for making that application has expired;

...

- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
- (a) *grant an order of possession, and*
- (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

The Landlord served the Tenant with the One Month Notice on September 16, 2021. The Tenant had until September 26, 2021 to apply for dispute resolution based on the One Month Notice. To the best of the Landlord's knowledge the Tenant has not applied to dispute the One Month Notice. The Landlord testified that rent remains unpaid for November and December. I find, on a balance of probabilities, that based on the Landlord's undisputed testimony, and the Tenant's failure to attend this hearing and present evidence relating to this application, the Landlord has met the burden of proof and is entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

I find that rent remains unpaid for November and December, for which the Tenant owes to the Landlord. Pursuant to Section 72(2)(b), the Landlord may retain the security deposit as a partial payment of money owed. In addition, having been successful, I find the Landlord is entitled to recovery of the application filing fee pursuant to Section 72(1) of the Act. I grant a Monetary Order of \$2,125.00 to the Landlord for the following:

Monetary Order

| | |
|--|------------|
| TOTAL OUTSTANDING RENT for November and December 2021: | \$2,700.00 |
| Less security deposit: | \$675.00 |
| Plus Recovery of Filing Fee: | \$100.00 |
| TOTAL OWING: | \$2,125.00 |

Conclusion

The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant the Landlord a Monetary Order in the amount of \$2,125.00, 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 of British Columbia 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 Act.

Dated: December 21, 2021

Residential Tenancy Branch