



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DS Bains Holdings LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, MNDCT, LAT, OLC, OPR-DE, MNR-DR, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on October 28, 2021, for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order restricting the Landlord’s entry - Section 70;
3. An Order allowing a lock change - Section 70;
4. An Order for the Landlord’s compliance - Section 62; and
5. A Monetary Order for compensation - Section 67.

The Landlord applied on November 12, 2021, for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant seeks an adjournment of the matter as the Tenant has been ill since November 19, 2021. The Tenant confirms that they do not have any medical note to

support the illness. The Landlord asks that the matter not be adjourned as it has been several months since the rents have been paid and the Landlord wishes to resolve the matter.

Rule 7.8 of the Rules of Procedure provides that the arbitrator will determine whether the circumstances warrant the adjournment of the hearing. Rule 7.9 of the Rules of Procedure provides that one of the criteria for considering an adjournment is the possible prejudice to each party. Although the Tenant is seeking an adjournment, I found the Tenant to be capable of providing evidence and argument leading up to the request for the adjournment. Further the Tenant had several days leading up to the hearing date to obtain supporting medical evidence to substantiate that the Tenant could not attend the hearing. Given the number of months that have elapsed since the Tenant's application I consider that an adjournment would significantly prejudice the Landlord's rights. For these reasons I decline the request for an adjournment.

The Tenant states that they did not receive any application for dispute resolution from the Landlord. The Landlord states that although the Tenant was served in person with the application for dispute resolution the Landlord cannot recall the date and there was no witness to this service.

Section 89(2) of the Act provides that an application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant. Given the Tenant's evidence of not having received the Landlord's application and as the Landlord was unable to provide dates or a proof of service by a witness for this service, I find on a balance of probabilities that the Landlord did not serve the Tenant with their application as required. I therefore dismiss the Landlord's application with leave to reapply. Leave to reapply is not an extension of any limitation period. Any orders that may be made will be restricted to the names of the Parties as provided on the Tenant's application.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. The primary matter is the notice to end tenancy. As the other claims of the Tenant are not related to whether or not the tenancy will end, I dismiss these claims with leave to reapply. Leave to reapply is not an extension of any limitation period.

During the hearing the Parties reached a mutual agreement to settle the matter of the end of the tenancy. The Parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the nature of the full and final settlement of this matter.

Agreed Facts

The tenancy started under written agreement on September 1, 2017. Rent of \$1,700.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit. The Tenant only paid half the rent for November 2021 and on November 3, 2021, the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent dated November 3, 2021 (the "Notice") by placing the Notice in the mailbox. The Notice sets out unpaid rent of \$850.00. The Tenant did not pay the remaining rent for November 2021 and has only paid rent of \$850.00 for each of December 2021, January and February 2022.

Analysis

Section 55(1.1) of the Act provides that if a tenant makes an application to dispute a notice to end tenancy and the notice to end tenancy complies in form and content and is valid, the director must grant an order requiring the payment of the unpaid rent. Based on the agreed facts that the Notice is valid for the unpaid rent I find that the Landlord is entitled to the unpaid rent of \$850.00 as set out on the Notice. Deducting the security deposit of \$850.00 plus zero interest leaves nothing owing for November 2021 rent.

Settlement Agreement

The Parties mutually agree as follows:

- 1. The tenancy will end at 1:00 p.m. on March 31, 2022;**
- 2. The Tenant will pay \$850.00 to the Landlord for March 2022 rent and will owe the Landlord \$850.00 for this month; and**
- 3. These terms comprise the full and final settlement of this dispute for both Parties.**

Section 63(2) of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order. Given the mutual agreement reached during the hearing in relation to the Landlord's possession of the unit I find that the Parties have settled this dispute as recorded above. In order to give effect to the agreement I grant the Landlord an order of possession on the agreed terms.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$850.00 in full satisfaction for the Landlord's entitlement to November 2021 rent.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on March 31, 2022. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme 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: February 24, 2022

Residential Tenancy Branch