



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 168289 HOLDING INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, OLC, PSF, OPR-DR

Introduction

This hearing dealt with cross-applications filed by the parties. On July 24, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a repair Order pursuant to Section 32 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking a provision of services or facilities pursuant to Section 62 of the *Act*.

On July 29, 2021, the Tenant made another Application for Dispute Resolution seeking to cancel the same 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act* and seeking a repair Order again pursuant to Section 32 of the *Act*.

On September 24, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act*.

A hearing was originally set down to address these matters on November 23, 2021; however, neither party attended the hearing, and these Applications were dismissed with leave to reapply. The Tenant filed for Review Consideration and a Review Hearing was granted. The subsequent Review Hearing was set down for January 18, 2022 and only an agent for the Landlord attended that hearing. The Tenant then applied again for Review Consideration and was granted another Review Hearing. In that second Review Consideration Decision, the Arbitrator specifically indicated the following instruction to the Tenant:

Notices of the time and date of the review hearing are included with this Review Consideration Decision for the Tenant to serve to the Landlord within 3 days of receipt of this Review Consideration Decision. The Tenant must also serve a copy of this Review Consideration Decision to the Landlord with the notice of review hearing.

On February 2, 2022, these Applications were set down for a Review Hearing on February 25, 2022 at 9:30 AM. Records indicate that the new Notice of Dispute Resolution hearing package, with the Review Consideration Decision, was emailed to the Tenant with instruction to serve the Landlord within three days of February 2, 2022. Submissions of new evidence were also permitted.

Z.Z. attend the Review Hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 25-minute teleconference. At the outset of the hearing, I informed Z.Z. that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation.

She advised that the Landlord did not receive the new Notice of Dispute Resolution hearing package or Review Consideration Decision that was required to be served by the Tenant. The only reason the Landlord knew of this Review Hearing was because of a courtesy email sent by the Residential Tenancy Branch. She then contacted the branch to get more information about this hearing.

Given that the Tenant did not serve the Notice of Dispute Resolution hearing package and Review Consideration Decision as required, I have dismissed the Tenant's Applications without leave to reapply.

Z.Z. advised that she did not submit any additional evidence for consideration on this file.

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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

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.

Z.Z. advised that the tenancy started on or around June 1, 2017, prior to when the Landlord purchased the rental unit in 2019. Rent was currently established at an amount of \$400.00 per month and was due on the first day of each month. A security deposit of \$300.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

She testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on July 21, 2021 by hand. She submitted that \$4,000.00 was owing for rent on July 1, 2021 because the Tenant had not paid rent for the last 10 months. As well, she indicated that the Tenant has not paid any rent since service of the Notice. She referred to the receipt of May 22, 2020 to support the Landlord's position that this was the last rent payment received.

She stated that the Landlord did not attempt to pursue rental arrears because this issue started during the beginning of the COVID pandemic and there were hesitations about travelling and interacting with the Tenant. She noted that the Landlord had another resident of the property acting as an agent for the Landlord in an attempt to manage the property from afar; however, this person was not really a qualified professional property manager. The effective end date of the tenancy was noted on the Notice as July 30, 2021.

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 Landlord complies 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 received the Notice on July 21, 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 received on July 21, 2021, the Tenant must have paid the rent in full or disputed the Notice by July 26, 2021 at the latest. While the Tenant disputed this Notice on time, I note that the Tenant did not serve the Notice of Dispute Resolution hearing package and Review Consideration Decision as required by the January 26, 2022 Review Consideration Decision. As such, and as noted above, these Applications were dismissed without leave to reapply.

Based on the undisputed evidence, as there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that she

breached the *Act* and jeopardized her 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.

Conclusion

The Tenant's Applications for Dispute Resolution are dismissed without leave to reapply.

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.

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: February 25, 2022

Residential Tenancy Branch