



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1151762 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNDL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for damage, and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the information on the Application for Dispute Resolution that the Landlord is seeking compensation for unpaid rent, rather than damage to the rental unit.

The Agent for the Landlord stated that on November 23, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on November 19, 2021 was sent to the Tenant, via registered mail, at the rental unit. The Landlord submitted Canada Post documentation that shows this package was delivered on November 26, 2021.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began prior to the Landlord purchasing the property in 2011;
- the Tenant is required to pay monthly rent of \$1,100.00 by the first day of each month;
- the Tenant has not paid any rent for any period after September 01, 2021;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has a declared effective date of November 12, 2021, was posted on the door of the rental unit on November 02, 2021;
- the Tenant is still occupying the rental unit;
- the Landlord would like to amend the Application for Dispute Resolution to include unpaid rent from December of 2021, January of 2022, and February of 2022;
- the Landlord is not currently seeking to recover any rent for March of 2022.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,100.00 by the first day of each month and that the Tenant has not paid rent for September, October, or November of 2021. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$3,300.00 in rent for those months.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was posted at the rental unit on November 02, 2021.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on November 05, 2021.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on November 05, 2021, I find that the earliest effective date of the Notice was November 15, 2021.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was November 15, 2021.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

I find it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include unpaid rent from December of 2021, January of 2022, and February of 2022.

As the Tenant has not yet vacated the rental unit, I find the Tenant is obligated to pay rent, for the time the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay full rent for November of 2021, I find that the Landlord has been fully compensated for that month. I find that the Tenant must also pay rent for December of 2021, January of 2022, and February of 2022, in the amount of \$3,300.00, as he occupied the unit for those months.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenant**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$6,700.00, which includes \$6,600.00 in rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$6,700.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 10, 2022

Residential Tenancy Branch