



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1253737 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated December 2, 2021 ("10 Day Notice"); for a monetary order for unpaid rent of \$1,500.00; for a monetary order for damage or compensation for damage under the Act of \$4,500.00, retaining the security deposit for this claim; and to recover the \$100.00 cost of their Application filing fee.

Two agents for the Landlord, R.K., and S.M. ("Agents") appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only people to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about it. During the hearing the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent, S.M., submitted an affidavit of service setting out that he served the Tenant

with the Notice of Hearing documents and evidentiary submissions by posting it on the door of the rental unit on December 23, 2021. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agents in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent, S.M., provided his email address in the Application and in the hearing; however, the Agents did not have the Tenant's email address; therefore, the Decision will be mailed to the Tenant at the rental unit. The Agents confirmed their understanding that the Decision would be emailed to them, mailed to the Tenant, and that any Orders would be sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agents confirmed the evidence in the tenancy agreement that the periodic tenancy began on January 1, 2021, with a monthly rent of \$1,500.00, due on the first day of each month. The Agents confirmed that the Tenant paid the Landlord a security deposit of \$750.00, and no pet damage deposit, and that the Landlord still holds the Tenant's security deposit in full.

Agents confirmed that the 10 Day Notice was signed and dated December 2, 2022, it has the rental unit address, it was served by attaching it to the rental unit door on December 2, 2021, with an effective vacancy date of December 12, 2022, corrected by the Act to December 15, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord \$1,500.00 in rent that was due on December 1, 2021.

The Agents confirmed that the Tenant has not paid rent for December 2021 through March 2022, and that he now owes the Landlord \$6,000.00, as set out below. They also confirmed that the Tenant has not responded to the 10 Day Notice or paid any rent or applied to the RTB for dispute resolution.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Dec 2021	\$1,500.00	\$0.00	\$1,500.00
Jan 2022	\$1,500.00	\$0.00	\$1,500.00
Feb 2022	\$1,500.00	\$0.00	\$1,500.00
March 2022	\$1,500.00	\$0.00	\$1,500.00
	TOTAL		\$6,000.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[emphasis added]

The Tenant did not pay any rent owing after he received the 10 Day Notice, and he did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46 (5) of the Act, 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 by that date.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on December 5, 2021, three days after it was posted on the rental unit door.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. There is no evidence before me that the Tenant had a right under the Act to deduct any rent owing to the Landlord. In the hearing, the Agent said that the Landlord was owed \$6,000.00 in unpaid rent as of March 2, 2022.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of December 12, 2021. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant. As noted above, the 10 Day Notice was deemed served on the Tenant on December 5, 2021. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to December 15, 2021. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$6,000.00 in rent owed for the months of December 2021 through March 2022.

I grant the Landlord's an Order of Possession, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me

is that the Tenant has not paid full rent since November 2021, the **Order of Possession** will be **effective two days after service** of the Order on the Tenant.

I also award the Landlord with **\$6,000.00** in unpaid rent owed to the Landlord by the Tenant, pursuant to sections 46 and 67 of the Act. Given the Landlord's success in his Application, I also award him with recovery of the **\$100.00** Application filing fee pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$750.00 in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain **\$750.00** of the Tenant's security deposit and I grant the Landlord a Monetary Order for the remainder owed by the Tenant to the Landlord of **\$5,350.00**.

Conclusion

The Landlord is successful in their Application, as the Tenant has not paid any rent for the last four months and did not dispute this Application; therefore, the Landlord's Application for an Order of Possession and a Monetary Order for unpaid rent is granted.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is awarded **\$6,000.00** in unpaid rent owed by the Tenant to the Landlord. Further, the Landlord is awarded recovery of his **\$100.00** Application filing fee for a total monetary award of **\$6,100.00**. The Landlord is authorized to retain the Tenant's **\$750.00** security deposit in partial satisfaction of these monetary awards. Pursuant to sections 46 and 67 of the Act, I grant the Landlord a Monetary Order from the Tenant of **\$5,350.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 29, 2022

Residential Tenancy Branch