



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Radke Bros Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNRL-S

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The applicant applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to retain the security deposit (the deposit), under section 38.

I left the teleconference connection open until 9:59 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Applicant RR attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 RR and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the RR's testimony that the tenant was served with the application and evidence (the materials) by registered mail on January 18, 2022, the notice of hearing, the interim decision and new evidence on February 08, 2022 and the amendment on February 10, 2022, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision). All the packages were mailed to the rental unit's address.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on January 23, 2022, the notice of hearing, the interim decision and the new evidence on February 13, 2022 and the amendment on February 15, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – named applicant

The notice of hearing indicates the landlord applicant is RR. The tenancy agreement and the Notice indicate the landlord is Radke Bros Construction Ltd. The interim decision states:

I have reviewed all documentary evidence and I find that the business landlord's name on the tenancy agreement does not match the individual landlord's name on the Application for Dispute Resolution.

There is also no evidence to demonstrate that the applicant is the owner of the company landlord or is otherwise entitled to have orders issued in their name.

I find this discrepancy in the landlord's name raises a question that can only be addressed in a participatory hearing.

RR submitted the 2021 corporate and personal property registries annual report indicating that RR is the president of Radke Bros Construction Ltd. RR affirmed he is acting as the legal representative of Radke Bros Construction Ltd. and that the application form is confusing.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to list landlord Radke Bros Construction Ltd. as the applicant, represented by RR.

Preliminary Issue – amendment of the monetary claim

At the hearing RR sought to amend his application for \$8,542.00 in unpaid rent to include an additional \$2,107.00 for the unpaid rent of March 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$10,649.00.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. a monetary order for unpaid rent?
3. an authorization to retain the deposit?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

RR affirmed the tenancy started on March 01, 2018. Monthly rent is \$2,107.00, due on the first day of the month. At the outset of the tenancy a deposit of \$987.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

RR affirmed the Notice was attached to the rental unit's door on October 08, 2021. RR submitted a witnessed proof of service indicating the Notice was attached to the rental unit's door on October 08, 2021 at 2:00 P.M.

RR submitted a copy of the October 08, 2021 Notice. It indicates the tenant did not pay rent in the amount of \$2,076.00 due on October 01, 2021. The effective date is October 21, 2021.

RR submitted a notice of rental increase dated September 01, 2021 indicating that rent will increase from \$2,076.00 to \$2,107.00 on January 01, 2022. RR affirmed the notice of rent increase was attached to the rental unit's front door in early September 2021.

RR affirmed the tenant paid \$1,100.00 on November 03 and \$800.00 on December 02, 2021 and did not pay rent after December 02, 2021. The tenant continues to occupy the rental unit.

The amendment states: "I want to recover money for the unpaid rent \$8,542.00. When I made the initial application for Dispute Resolution seeking a order of possession, I didn't request a monetary order for unpaid rent, which I am now requesting."

RR submitted a direct request worksheet indicating the tenant did not pay rent in the amount of \$2,076.00 in October, November and December 2021 and paid \$1,100.00 on November 03, 2021 and \$800.00 on December 02, 2021.

RR submitted a monetary order worksheet dated February 10, 2022. It states the total amount claimed is \$8,542.00.

RR affirmed the tenant emailed him on February 16, 2022 offering a repayment plan and the landlord replied stating that the rent in arrears by March 01, 2022 is \$10,649.00.

The landlord is claiming for \$10,649.00 for the balance of October, November and December 2021, January, February and March 2022 rent.

Analysis

I accept the uncontested testimony that RR served the Notice on October 08, 2021 in accordance with section 88(g) of the Act. Per section 90(c) of the Act, the tenant is deemed to have received the Notice on October 11, 2021.

Order of possession

Based on the RR's convincing testimony, the tenancy agreement and the notice of rent increase, I find that the landlord and the tenant agreed to a tenancy and the tenant was obligated to pay the monthly rent in the amount of \$2,076.00 on the first day of each month until December 2021 and \$2,107.00 since January 2022.

Pursuant to section 46(1) of the Act, 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.

Based on the RR's convincing testimony, the Notice and the direct request worksheet, I find the tenant has not paid the balance of October rent, November, December 2021, January, February and March 2022 rent.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord's agent, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Section 68(2) of the Act states:

- (2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,
 - (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

Based on the above, as the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(a)(ii) and 68(2)(a) of the Act.

I award the landlord an order of possession, per section 55(2)(b) of the Act.

Monetary order

Section 26(1) 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.

Section 57(3) of the Act states: "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

Based on the RR's undisputed testimony, the Notice and the direct request worksheet, I find the tenant did not pay the rent in accordance with section 26(1) of the Act.

Per section 26(1) of the Act, I award the landlord the balance of October rent in the amount of \$176.00 (\$2,076.00 subtracted the partial payments in the total amount of \$1,900.00), November and December 2021 in the amount of \$2,076.00 per month,

January and February 2022 in the amount of \$2,107.00 per month and *per diem* rent from March 01 to 21, 2022 (the date of this decision) in the amount of \$1,474.90 ($\$2,107.00/30 \times 21$ days).

The landlord is at liberty to apply for compensation for overholding tenant.

Deposit and summary

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$987.50 deposit in partial satisfaction of the monetary award.

In summary:

| Item | Amount \$ |
|--|-----------------|
| Unpaid rent October 2021 | 176.00 |
| Unpaid rent November and December 2021 ($\$2,076.00 \times 2$) | 4,152.00 |
| Unpaid rent January and February 2022 ($\$2,107.00 \times 2$) | 4,214.00 |
| Unpaid rent March 01 to 21, 2022 | 1,474.90 |
| Subtotal | 10,016.90 |
| Deposit (minus) | 987.50 |
| Total: | 9,029.40 |

Conclusion

Pursuant to section 55(2)(b) of the Act, 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.

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$987.50 deposit and award the landlord \$9,029.40. 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, this order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: March 21, 2022

Residential Tenancy Branch