



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0974971 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing originated as a Direct Request proceeding. In an Interim Decision dated March 1, 2022 a participatory hearing was ordered. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent 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 the agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they are not recording this dispute resolution hearing.

The agent confirmed the landlord's email address for service of this decision and orders.

Preliminary Issue- Amendments

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

The agent testified that the landlord's name listed on the application for dispute resolution is the name of the building, not the legal name of the landlord. The agent provided the legal name of the landlord, a numbered company. I accept the agent's above testimony, and pursuant to section 64, I amend the landlord's application to state the legal name of the landlord.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

The landlord's original application claimed unpaid rent in the amount of \$1,705.00. The agent testified that since filing for dispute resolution, the amount of rent owed has increased to \$3,410.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent/ compensation for overholding, in the amount of \$3,410.00.

Preliminary Issue Service

The Interim Decision dated March 1, 2022 states:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

The landlord testified that the above documents were served on the tenant via registered mail on March 3, 2022. A Canada Post registered mail receipt for same was entered into evidence. I find that the tenant was deemed served with the above documents on March 8, 2022, five days after their mailing, in accordance with section 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on April 1, 2019. Monthly rent in the amount of \$1,705.00 is payable on the first day of each month. A security deposit of \$852.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted on the tenant's door on January 15, 2022. The agent entered into evidence a witnessed proof of service document stating same. The 10 Day Notice was entered into evidence. The tenant's last name on the 10 Day Notice is spelt starting with a K., and not a Z, as listed on this application for dispute resolution. Only the first letter of the tenant's last name differs from that listed on this application for dispute resolution. The agent testified that it was a typo, and that the tenant's last name starts with a Z. The 10 Day Notice is signed and dated by an agent of the landlord, gives the address of

the rental unit, states the effective date of the notice, states the ground for ending the tenancy and is in the approved form.

The tenant did not file to dispute the 10 Day Notice.

The agent testified that the tenant failed to pay rent in the amount of \$1,705.00 that was due on January 1, 2022. The agent testified that the tenant paid January 2022's rent on January 25, 2022, but has not paid any rent for February or March 2022 and owes \$3,410.00 in unpaid rent for those months. The agent entered into evidence ledger showing that on January 1, 2022, rent was not paid.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting a copy to the tenant's door. Based on the agent's testimony and the witnessed proof of service document, I find that the 10 Day Notice was posted on the tenant's door on January 15, 2022. I find that the tenant was deemed served with the 10 Day Notice on January 18, 2022, three days after its posting, in accordance with sections 88 and 90 of the *Act*. Based on the agent's undisputed testimony, I find that the tenant paid January 2022's rent on January 25, 2022, seven days after deemed receipt of the 10 Day Notice.

Upon review of the 10 Day Notice, I find that it meets the form and content requirements of section 52 of the *Act*. I find that the landlord's typo in spelling the tenant's last name is an obvious error, and the tenant should have known the correct spelling of their last name. I find that it is reasonable to amend the 10 Day Notice to correctly spell the tenant's last name, and I so amend.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that 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.

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

(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.

Based on the undisputed evidence of the agent, I find that the tenant did not pay rent or dispute the 10 Day Notice within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice.

In this case, this required the tenant to vacate the premises by January 28, 2022. As the tenant has not vacated the subject rental property, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the tenancy agreement entered into evidence and the agent's testimony, I find that rent in the amount of \$1,705.00 was due on the first day of each month. Based on the agent's undisputed testimony, I find that the tenant failed to pay compensation for overholding the subject rental property for February and March 2022's totalling \$3,410.00.

Residential Tenancy Policy Guideline #3 states:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

As this tenancy ended on January 28, 2022 and the tenant has not yet moved out, I find that the tenant has overheld the subject rental property from January 28, 2022 to the present date. Pursuant to section 57(3) of the *Act* I find that the tenant is required to

compensate the landlord for use and occupancy of the subject rental property. As January 2022's rent was paid, albeit late, the tenant must compensate the landlord for the use and occupancy of the subject rental property for February and March 2022. Pursuant to section 67 of the Act, I award the landlord \$3,410.00 for overholding. The tenant may be subject to further claims for overholding, depending on the date the tenant vacates the subject rental property.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$852.50.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
February overholding	\$1,705.00
March overholding	\$1,705.00
Filing fee	\$100.00
Less security deposit	-\$852.50
TOTAL	\$ 2,657.50

The landlord is provided with this Order in the above terms and the landlord 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: April 01, 2022

Residential Tenancy Branch