



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

On March 21, 2022, the Landlord made an Application for a Dispute Resolution Proceeding seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was subsequently scheduled to commence via teleconference at 9:30 AM on May 19, 2022.

C.C. and B.W. attended the hearing as agents for the Landlord; however, neither Tenant attended at any point during the 18-minute teleconference. At the outset of the hearing, I advised the parties that recording of the hearing was prohibited. They were reminded to refrain from doing so. As well, they provided a solemn affirmation.

C.C. advised that the Notice of Hearing package and some evidence was served to each Tenant by registered mail on March 25, 2022 (the registered mail tracking numbers are noted on the first page of this Decision). He stated that these packages were delivered. Based on this solemnly affirmed testimony, I am satisfied that the Tenants were duly served the Notice of Hearing packages and some evidence.

Both C.C. and B.W. could not answer decisively if, when, or how the Landlord’s additional evidence was served to the Tenants. Without this information, and as this additional evidence was submitted to the Residential Tenancy Branch late and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this additional evidence and will not consider it when rendering this Decision.

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.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

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.

C.C. advised that the tenancy originally started on January 8, 2021, and that the rental unit was purchased by a new owner in October 2021. Rent was currently established at an amount of \$1,200.00 per month and it was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served to the Tenants by posting it to their door on February 3, 2022. The Notice indicated that \$1,200.00 was owing for rent on February 1, 2022. The effective end date of the tenancy was noted as February 16, 2022.

He submitted that the Tenants continually paid rent late and that they did not pay any rent for February 2022. Thus, the Notice was served. He stated that the Tenants then paid February 2022 rent on February 16, 2022, and they were provided with a receipt for use and occupancy only. Furthermore, he indicated that the Tenants have paid rent for March, April, and May 2022, but they were also provided with receipts for each month for use and occupancy only. As there are no rental arrears, the Landlord is not seeking a Monetary Order; however, an Order of Possession is still being sought based on the Notice.

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 Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants 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 Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants 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 Tenants were served the Notice on February 3, 2022 by being posted to the door. According to Section 46(4) of the *Act*, the Tenants 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 served on February 3, 2022 by being posted to the door, the Notice was deemed received on February 6, 2022. As such, the Tenants must have paid the rent in full or disputed the Notice by February 11, 2022 at the latest. The undisputed evidence is that the Tenants paid the rent on February 16, 2022; however, this was late and would not cancel the Notice. Furthermore, the Tenants did not dispute the Notice and they did not have a valid reason under the *Act* for withholding the rent. As such, I

am satisfied that the Tenants breached the *Act* and jeopardized their tenancy. Moreover, I am satisfied that the receipts for use and occupancy only demonstrate that the Landlord did not reinstate the 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 Tenants have 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, based on C.C.'s request, on **May 31, 2022 at 1:00 PM** after service of this Order on the Tenants.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this claim.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective on **May 31, 2022 at 1:00 PM** on the Tenants. Should the Tenants 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: May 19, 2022

Residential Tenancy Branch