



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR-DR, FFL

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 landlord 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; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:14 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by agents SB (the landlord) and MN, 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed 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 \$5,000.00."

The applicant is Phoenix Homes BC LTD and the respondents are tenants GK and MK.

I accept the landlord's testimony that the tenants were served with the application, the evidence and the interim decision (the materials) by registered mail on April 01, 2022, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision). The landlord sent the packages to the rental unit's address and submitted photographs of the packages indicating the tenants' names GK and MK.

The landlord affirmed he did not receive response evidence.

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 tenants are deemed to have received the materials on April 06, 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 respondents.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, 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 parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on May 01, 2020. Monthly rent is \$1,400.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$700.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the landlord is numbered company 0924203 BC Ltd. (the numbered company) and the two tenants are GA and MK.

The interim decision states:

I have reviewed all documentary evidence and I find that one of the tenants' names on the tenancy agreement (Person G.K.) does not match Respondent G.K.'s name on the Application for Dispute Resolution.

I also find that the landlord's name on the tenancy agreement does not match the landlord's name on the Application for Dispute Resolution. I note both landlords are named on the 10 Day Notice. However, in a Direct Request, I find I am not able to determine whether the two landlords are part of the same business, whether one is a property manager for the other, or whether the rental property changed ownership.

The landlord stated that "Phoenix Homes BC LTD" is the trading name for the numbered company and that GA's legal name is GK.

The landlord and MN testified that they have a photocopy of GK's identity card and it indicates that her legal name is GK. GK introduced herself to the landlord as GA and prefers to be referred to as GA. The landlord submitted a letter from GK dated February 02, 2022: "Rent for March 2022: minus \$400.00. Signed: GA"

The landlord served the Notice by attaching it to the rental unit's door on February 10, 2022 at 10:50 A.M. The landlord submitted a witnessed proof of service (RTB34).

The landlord submitted into evidence a copy of the February 10, 2022 Notice. It indicates that tenants GK and MK did not pay rent in the amount of \$2,100.00 due on February 01, 2022. The effective date is February 20, 2022.

The landlord said he served the Notice with a ledger explaining the amount of \$2,100.00.

The landlord affirmed the tenants have not disputed the Notice and continue to occupy the rental unit. The landlord stated the tenants have not paid rent.

The landlord submitted a direct request worksheet.

Analysis

I accept the uncontested testimony that the landlord served the Notice on February 10, 2022 in accordance with section 88(g) of the Act. Per section 90(c) of the Act, the tenants are deemed to have received the Notice on February 13, 2022.

Based on the landlord's convincing undisputed testimony and the letter dated February 02, 2022, I find that GA's legal name is GK.

Based on the landlord's convincing undisputed testimony and the tenancy agreement, I find that the parties agreed to a tenancy and the tenants are obligated to pay monthly rent in the amount of \$1,400.00 on the first day of each month.

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.

Section 46(4) and (5) of the Act states:

- (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.

Based on the landlord's convincing testimony, the Notice and the direct request worksheet, I find the tenants did not pay rent due on February 01, 2022 and did not dispute the Notice.

Pursuant to section 53(2) of the Act, the effective date is automatically corrected to February 23, 2022.

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

Based on the above, I find the tenancy ended on February 23, 2022, per section 44(1)(a)(ii) of the Act.

The landlord is entitled to an order of possession effective two days after service on the tenants, per section 55(2)(b) of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application, per section 72(2)(b) of the Act.

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 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.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the deposit to recover the filing fee.

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: July 18, 2022

Residential Tenancy Branch