



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JAGS DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, MNDCL, OPN, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the *Residential Tenancy Act* (the *Act*) on March 29, 2022, seeking:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- A Monetary Order for unpaid rent;
- Compensation for monetary loss or other money owed;
- An order of possession because the Tenant has given written notice to end the tenancy; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 AM on July 19, 2022, and was attended by the agent for the Landlord J.R. (the Agent), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing, and any documentary evidence to be relied on by the Applicant at the hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below. The Agent stated that the Notice of Dispute Resolution Proceeding Package (NODRP), which includes a copy of the Application and the Notice of Hearing (NOH), along with 19 pages of documentary evidence, were personally served on the Tenant and another occupant/tenant of the rental unit, R.B. at a gas station at 6:47 AM on April 8, 2022. The Agent stated that the remaining documentary evidence before me was served on the Tenant by email on July 7, 2022. The Agent stated that they know this evidence was received by the Tenant as the Tenant verbally acknowledged receipt. As a result, and in the absence of any evidence to the contrary, I find that the Tenant was personally served with the NODRP and the above noted 19 pages of documentary evidence on April 8, 2022, in compliance with sections 59(3) and 89(1)(a) of the *Act* and rule 3.1 of the Rules of Procedure.

Although I am also satisfied that the Tenant was served with the documentary evidence sent by email on July 7, 2022, rule 3.14 of the *Act* states that documentary evidence intended to be relied on at the hearing by the Applicant must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. As July 7, 2022, is less than 14 days before the hearing, and I am not satisfied that the criteria under rule 3.17 for the acceptance and consideration of late evidence has been met, I therefore exclude this documentary evidence from consideration.

The NODRP states the date and time of the hearing, that the hearing will be conducted by telephone conference call and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the NODRP were correct and I note that the Agent was able to attend the hearing promptly using the information contained in the NODRP. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied that the Tenant was served with the NODRP as required by the *Act* and the Rules of Procedure, and therefore had notice of the hearing and an opportunity to attend, the hearing proceeded as scheduled, despite the absence of the

Tenant or an agent acting on their behalf. Although the teleconference remained open for the 36-minute duration of the hearing, no one attended the hearing on the Tenant's behalf.

Although I have reviewed all evidence and testimony before me accepted for consideration in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing, I sought clarification from the Agent regarding the full legal name of the Landlord, as I had concerns that the name listed in the Application was not correct. The Agent stated that they are a property manager for the property management company named in part as the landlord in the Application. The Agent stated that the property management company they work for is contracted to manage the property by the limited partnership that owns the property. The Agent provided me with the full legal name of the limited partnership, and with the Agent's agreement, the Application was amended to name the limited partnership as the Landlord.

Preliminary Matter #2

The Application contains claims under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims made relate to enforcement of a 10 Day Notice and recovery of unpaid rent and I note that a priority hearing date was given for this reason. I also find that the other claims made by the Applicant are not sufficiently related to the 10 Day Notice and that the facts of those claims are not germane to the question of validity of the 10 Day Notice. As a result, I exercise my discretion to dismiss, with leave to reapply, the following claims:

- Compensation for monetary loss or other money owed; and
- An order of possession because the Tenant has given written notice to end the tenancy.

While I grant the Landlord leave to re-apply for the above noted claims, the principle of res judicata still applies, if applicable. This is also not an extension of any applicable statutory time limits.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month to month) tenancy began on September 1, 2018, that rent in the amount of \$1,800.00 is due on the first day of each month, and that a security deposit in the amount of \$900.00 is required. The Agent stated that rent has not been increased during the tenancy and that the Landlord still holds the \$900.00 security deposit in trust.

The Agent stated that when the Tenant did not pay rent as required, notices to end tenancy were served. Although 5 separate 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were submitted for my consideration, only one of the 10 Day Notices was listed in the Application as being the subject of the dispute. A copy of this 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, referred to as the 10 Day Notice in this decision, was submitted for my consideration. The 10 Day Notice before me is signed and dated March 14, 2022, has an effective date of March 25, 2022, and states that rent in the amount of \$1,900.00, due on March 1, 2022, remains unpaid. At the hearing the Agent stated that the 10 Day Notice was personally served on another occupant/tenant of the rental unit, R.B., at 5:20 PM on March 14, 2022. The Agent also stated that \$100.00 of the rent listed on the 10 Day Notice was outstanding from previous months and that \$1,800.00 was for the current month of March 2022.

The Agent provided affirmed and undisputed testimony that although the Tenant paid \$1,700.00 on March 17, 2022, the remaining \$200.00 owed was not paid within the time period set out under section 46(4)(a) of the *Act*. The Agent provided ledgers showing the rent amounts owed and paid and stated that currently the Tenant owes only \$300.00 in outstanding rent, as subsequent rent payments were made after the 5 day period set

out under section 46(4) of the *Act*. The Agent sought authorization to withhold \$400.00 from the \$900.00 security deposit held in trust by the Landlord for recovery of unpaid rent and the filing fee.

Although the teleconference remained open for the 36-minute duration of the hearing, no one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy 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.

However, section 46(4) and 46(5) of the *Act* also state:

46 (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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was served with

the 10 Day Notice on March 14, 2022. I also find that the Tenant was obligated to pay the monthly rent amount of \$1,800.00, on time and in full on the first day of each month. Based on the uncontested documentary evidence before me, such as the notices to end tenancy and the rent ledgers, and uncontested and affirmed testimony of the Agent, I am satisfied that \$1,900.00 in rent was due at the time the 10 Day Notice was served, and that only \$1,700.00 of this amount was paid by the Tenant within the time period set out under section 46(4)(a) of the *Act*. I am also satisfied that the Tenant currently owes \$300.00 in outstanding rent for the month of July 2022.

As a result, and as there is no evidence before me that the Tenant disputed the 10 Day Notice as permitted under section 46(4)(b) of the *Act*, I therefore find that the Tenant was conclusively presumed, pursuant to section 46(5) of the *Act*, to have accepted the end of the tenancy as a result of the 10 Day Notice, and required to vacate the rental unit by the effective date of March 25, 2022. I therefore find that the Landlord is entitled to an Order of Possession for the rental unit, effective 1:00 PM on July 31, 2022, and I order the Tenant and all occupants to vacate the rental unit by that date and time.

I also find, pursuant to sections 7 and 26 of the *Act*, that the Landlord is entitled to recovery of \$300.00 in outstanding rent. Pursuant to section 72(1) of the *Act*, I also award the Landlord recovery of the \$100.00 filing fee. Pursuant to section 72(2)(b) of the *Act*, and in accordance with the Agent's request, I therefore authorize the Landlord to withhold \$400.00 from the security deposit currently held in trust by the Landlord, in recovery of this amount. The remaining \$500.00 balance must be dealt with in accordance with the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 PM on July 31, 2022, 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, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72(2)(b) of the *Act*, the Landlord is permitted to retain \$400.00 of the security deposit for unpaid rent and recovery of the filing fee for this Application.

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 19, 2022

Residential Tenancy Branch