



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

On April 26, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (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 hearing was scheduled to commence via teleconference at 11:00 AM on August 25, 2022.

J.S. and B.A. attended the hearing as agents for the Landlord; however, the Tenant did not make an appearance at any point during the 19-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, they provided a solemn affirmation.

J.S. advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on May 11, 2022, and that the package was delivered on May 13, 2022 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that this package was sufficiently served to the Tenant. As such, I have accepted this evidence and will 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.

J.S. advised that the tenancy started on April 26, 2018, that rent was currently established in the amount of \$570.00 per month, and that it was due on the first day of each month. Neither a security deposit nor a pet damage deposit was paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenant by regular mail on March 10, 2022. The Notice indicated that \$2,065.50 was owing for rent on March 1, 2022. The effective end date of the tenancy was noted as March 25, 2022, on the Notice.

She submitted that the Tenant signed a repayment plan on December 2, 2021, agreeing to pay back the amount of \$1,180.00 in installments of \$98.50 per month for 11 months and then one final payment of \$96.50, in addition to the regular monthly rent that was owed. She advised that the Tenant did not pay any rent for January, February, or March 2022; however, she could not identify how the specific amount of rent owing on the Notice of \$2,065.50 was calculated. In addition, she stated that the Tenant has not paid any rent since service of 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 Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant 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 Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant 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 Notice was served on March 10, 2022, by being mailed to the Tenant. According to Section 46(4) of the *Act*, the Tenant then had 5 days from being deemed to have received the Notice to pay the overdue rent 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 deemed received on March 15, 2022, the Tenant must have paid the rent in full or disputed the Notice by March 20, 2022, at the latest. However, the undisputed evidence is that the Tenant did not pay any rent, or dispute the Notice by this date to cancel it. When reviewing the Notice, despite the amount of rent owing on the Notice being incorrect, as the Tenant has neither paid any rent, nor disputed the Notice, I am satisfied that at least some rent was outstanding. Therefore, I am satisfied that it was a valid Notice. As the Tenant did not have a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy

As the Landlord's Notice for unpaid rent and utilities is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has 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 grant the Landlord an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

However, with respect to the Landlord's claims for monetary compensation, as the Landlord could not indicate exactly how much rent was owing up to the date of the hearing, these claims are dismissed with leave to reapply.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** 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: August 25, 2022

Residential Tenancy Branch