



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEPPLE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-DR, MNR-DR, FFL

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was adjourned to this participatory hearing by the Adjudicator who initially considered the Application for Dispute Resolution.

This participatory hearing was convened to consider the Landlord's application for an Order of Possession, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on August 17, 2022 the Dispute Resolution Package was personally served to the Tenant. The Tenant acknowledged receipt of these documents.

The Agent for the Landlord stated that in September of 2022 notice of this hearing was personally served to the Tenant. The Tenant acknowledged receipt of notice of this hearing.

On August 15, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on August 17, 2022. The Tenant acknowledged receiving most of this evidence, although he does not acknowledge receiving the documents dated July 20, 2022. As the Tenant did not acknowledge receiving these documents, they were not accepted as evidence for these proceedings.

The Agent for the Landlord was given the opportunity to testify about the content of the documents dated July 20, 2022. As the Tenant does not dispute the content of those documents, I find it is not necessary for me to physically view the documents. As I do not need to physically view those documents, I did not consider adjourning the hearing for the purposes of allowing them to be re-served to the Tenant.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent that has accrued since March of 2022.

I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and/or to a monetary Order for unpaid rent?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in May of 2020;
- the Tenant agreed to pay \$450.00 in rent by the first day of each month;

- on March 09, 2022 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenant;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by March 20, 2022; and
- the Tenant is still living in the rental unit.

The Agent for the Landlord and the Tenant agree that the following rent payments were made:

- Rent for June of 2020 was paid on May 20, 2020;
- Rent for July of 2020 was paid on July 10, 2020;
- Rent for August of 2020 was paid on September 04, 2020;
- Rent for September of 2020 was paid on October 10, 2020;
- Rent for October of 2020 was paid on December 03, 2020;
- Rent for November of 2020 was paid on January 08, 2021;
- Rent for December of 2020 was paid on February 02, 2021;
- Rent for January of 2021 was paid on March 06, 2021;
- Rent for February of 2021 was paid on April 07, 2021;
- Rent for March of 2021 was paid on July 08, 2021;
- Rent for April of 2021 was paid on August 23, 2021;
- Rent for May of 2021 was paid on August 23, 2021 (two month's rent paid on this date);
- Rent for June of 2021 was paid on October 24, 2021;
- Rent for July of 2021 was paid on November 14, 2021;
- Rent for August of 2021 was paid on December 15, 2021;
- Rent for September of 2021 was paid on February 01, 2022;
- Rent for October of 2021 was paid on March 04, 2022; and
- No rent was paid after March 04, 2022.

The Tenant stated that in addition to the above payments, which were paid by money order, he made three cash payments of \$450.00 to "Jody", who was a building manager. He stated that he cannot recall the dates of those cash payments and he cannot recall the month in which they were paid.

The Agent for the Landlord stated that she spoke with "Jody", who is not longer employed by the Landlord, and she advised that the Tenant did not make any cash payments.

The Tenant stated that he attempted to provide a payment for rent in March by providing the Landlord with a money order on March 01, 2022, in the amount of \$450.00. He stated that an agent for the Landlord refused the rent payment.

The Agent for the Landlord stated that no rent payment was offered on March 01, 2022, although one was offered and accepted on March 04, 2022.

The Tenant stated that he asked a friend to file an Application for Dispute Resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, but he does not believe an Application for Dispute Resolution was filed.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay rent of \$450.00 by the first day of each month.

For the period between June 01, 2020 and March 31, 2022, I find that the Tenant was required to pay \$9,900.00 in rent. ($\450.00×22)

On the basis of the undisputed evidence, I find that the Tenant paid \$7,650.00 in rent for the period between June 01, 2022 and March 31, 2022. ($\$450.00 \times 17$)

I find that there is insufficient evidence to establish that the Tenant paid his rent of \$450.00, in cash, on three other occasions. In reaching this conclusion I was influenced, in part, by the fact the Tenant was unable to recall when each rent payment was made, nor was he able to recall the month in which he paid. I find his inability to recall dates of the payments reduces the credibility of his claim that such payments were made.

In determining there was insufficient evidence to conclude that rent had been paid in cash at any point, I was further influenced by the absence of any documentary evidence, such as a bank withdrawal, which could corroborate the Tenant's testimony that it was paid in cash.

In determining there was insufficient evidence to conclude that rent had been paid in cash at any point, I was further influenced by the Agent for the Landlord's testimony that

she spoke with “Jody” who allegedly received the cash payments and “Jody” denied receiving those payments. While this is subject to the frailties of hearsay evidence, “Jody” is no longer employed by the Landlord and there can be no reasonable expectation for that party to provide evidence at these proceedings.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

In circumstances such as these, where the Landlord has never given the Tenant a receipt for a cash payment because the Landlord does not acknowledge ever receiving a cash payment, the absence of a receipt neither supports nor refutes the Tenant's submission that rent was paid in cash.

As I have insufficient evidence to conclude that the Tenant made three rent payments in cash, I find that the Tenant owes \$2,250.00 in rent for the period ending on March 31, 2022.

On the basis of the undisputed evidence, I find that the Tenant has paid no rent for the period between April 01, 2022 and October 11, 2022. As I will be issuing an Order of Possession that entitles the Tenant to remain in the unit until October 15, 2022, I find that the Tenant must pay rent for the period between April 01, 2022 and October 15, 2022, in the amount of \$2,925.00. (6.5 x \$450.00)

In adjudicating this matter, I have placed no weight on the Tenant's submission that the Landlord declined a payment of \$450.00 on March 01, 2022. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Tenant's testimony that the payment was offered or that refutes the Agent for the Landlord's testimony that one was not offered.

As the Agent for the Landlord testified that a payment of \$450.00 was offered and accepted on March 04, 2022, I find it highly unlikely that the Landlord would have declined a payment that was offered on March 01, 2022.

Even if the Tenant had offered a payment on March 01, 2022, that would have little effect on my decision that rent of \$2,250.00 was still due on March 01, 2022. It would also not effect my decision that the Landlord had the right to end the tenancy pursuant to section 46 of the *Act*, as rent would still have been overdue even if the Tenant had paid \$450.00 on March 01, 2022.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, was personally served to the Tenant on March 09, 2022, which declared that the Tenant must vacate the unit by March 20, 2022. I find this serves as proper notice that the Landlord wishes to end the tenancy pursuant to section 46(1) of the *Act*.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. I find that the Tenant exercised neither of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. I therefore grant the Landlord an Order of Possession that is effective on October 15, 2022.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is **on October 15, 2022**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$5,275.00, which includes \$5,175.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I therefore grant the Landlord a monetary Order \$5,275.00. In the event the Tenant does not voluntarily comply with this Order, it

may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: October 11, 2022

Residential Tenancy Branch