



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION AND YALETOWN 939 HOLDINGS INC. and [tenant name suppressed to protect privacy]

DECISION

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 June 16, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on June 07, 2022 was sent to the Tenant, via registered mail, at rental unit. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord stated that on July 13, 2022 the notice of this hearing was sent to the Tenant, via registered mail, at rental unit. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the hearing proceeded in the absence of the Tenant.

In October of 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via

email, on October 14, 2022. The Landlord submitted evidence to show that these documents were delivered to the Tenant's email address. I therefore find that the evidence was served to the Tenant pursuant to section 71(2)(c) of the *Act*, and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Agent for the Landlord affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Agent for the Landlord affirmed she 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 all rent that is currently due. 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 Agent for the Landlord stated that this tenancy began on May 07, 2022 and that the Tenant is still occupying the rental unit.

The Agent for the Landlord stated that the address is incorrectly recorded on the written tenancy agreement and that the correct address is recorded on the Application for Dispute Resolution, which is the address which appears on the first page of this decision.

The Agent for the Landlord stated that the Tenant was required to pay pro-rated rent of for May of 2022 and monthly rent of \$4,014.00 for every month thereafter. She stated that rent is due by the first day of each month.

The Agent for the Landlord stated that the Tenant still owes \$1,2310.10 in pro-rated rent for May of 2022 and that she has not paid any rent for the period between June 01, 2022 and November 20, 2022.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had a declared effective date of June 06, 2022, was placed in the Tenant's mailbox on May 26, 2022. The Agent for the Landlord acknowledges that the address on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is different than the address on the tenancy agreement and on this Application for Dispute Resolution. She stated that this was a clerical error.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. On the basis of the undisputed evidence, I find that the Tenant still owes \$25,314.10 in rent, which includes all rent due up to November 30, 2021. As the Tenant is required to pay rent when it is due, I find that the Tenant must pay this amount to the Landlord.

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 placed in the Tenant's mailbox on May 26, 2022, which declared that the Tenant must vacate the unit by June 06, 2022. In the absence of evidence to the contrary, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is deemed received by the Tenant on May 29, 2022, pursuant to section 90 of the *Act*.

Section 52(b) of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must give the address of the rental unit. On the basis of the testimony of the Agent for the Landlord and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was submitted in evidence, I find that the address on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is decidedly different than the address of the rental unit. I find that the difference in addresses is significant, as the

Tenant may not have understood the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities served to end the tenancy at her rental unit. I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is not effective, as it does not comply with section 52(b) of the *Act*.

As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings is not effective, pursuant to section 52(b) of the *Act*, I am unable to award the Landlord an Order of Possession. The application for an Order of Possession is dismissed. The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

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 application for an Order of Possession is dismissed. The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and to apply for an Order of Possession on the basis of that new Notice.

The Landlord has established a monetary claim, in the amount of \$25,414.10, which includes \$25,314.10 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 for \$25,414.10. 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: November 10, 2022

Residential Tenancy Branch