



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding RUBI-JANE INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

The Landlord applied for dispute resolution (“Application”) and seeks an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover unpaid rent and the cost of the filing fee under section 72 of the Act.

The Landlord was represented at the hearing by counsel, C.K., who was not affirmed as they confirmed they had been called to the British Columbia Bar and as such, have already sworn an oath. The Tenant M.B. appeared at the hearing and was joined by an Agent, P.M., who affirmed to tell the truth during proceedings and were given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Residential Tenancy Branch provided the Landlord with the Notice of Dispute Resolution Package (“Materials”) on March 2, 2023. C.K. testified the Landlord’s Agent served the Materials on the Tenant along with a request to amend the Application by registered mail on March 3, 2023 but as it was not collected, a process server was hired to serve the Tenant in-person on March 6, 2023. Copies of the Canada Post registered mail tracking numbers and receipts were entered into evidence by the Landlord. The tracking numbers are included on the front page of this Decision. The Tenant confirmed receipt of the Materials.

In light of the above, I find that pursuant to section 89 and 90 of the Act, the Landlord’s Materials were sufficiently served to the Tenant.

Preliminary Issue: Request for Adjournment

The Tenant requested the hearing be adjourned to a later date. They stated they needed more time to engage the services of legal counsel. C.K. opposed the request for an adjournment.

Rule 7.8 of the *Rules of Procedure* allows an Arbitrator to adjourn the hearing to another time and Rule 7.9 sets out the factors that must be considered when a request to adjourn is made:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the Tenant was allowed sufficient time in advance of the hearing to seek legal counsel. Accordingly, the request for an adjournment was denied.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

C.K. stated the tenancy started on March 1, 2020 with monthly rent of \$1,400.00 due on the first day of the month. C.K. also testified that no security deposit or pet damage deposit were taken by the Landlord. M.B. stated the tenancy started April 15, 2020 and that they paid a security deposit of \$1,450.00. No tenancy agreement was provided as evidence. Parties agreed the Tenant still resides in the rental unit.

C.K. testified that the rent due on January 1, 2023 went unpaid and The Notice dated January 17, 2023 was served to the Tenant in-person on January 17, 2023 by an Agent

of the Landlord. I was referred to a witnessed Proof of Service form which had been entered into evidence by the Landlord.

C.K. testified that no rent had been received since service of the Notice and they had not received any notification that the Tenant had disputed the Notice. C.K. confirmed the total amount of outstanding rent was \$4,200.00 as of March 1, 2023. This amount is comprised of rent due on January 1, 2023, February 1, 2023 and March 1, 2023. C.K. stated the Landlord had no evidence the Tenant was entitled to withhold rent of any amount.

M.B. testified they did not pay rent due on January 1, 2023 because they had been deliberately overpaying rent by \$50.00 per month throughout the tenancy and so had accrued a balance over a month's rent in overpaid rent.

P.M. stated that as of January 1, 2023 the Tenant had overpaid by a total of \$1,800.00. They testified that in February 2023 they had spoken with R.S., an Agent of the Landlord and tried to pay the remainder of the balance owing for the month of February 2023 in cash which was not accepted. They also tried to e-transfer a rent payment to the child of R.S. but it was not accepted. R.S. also stated they made repairs to the heating in the rental unit last winter.

C.K. testified that the Landlord's position is that there was no overpayment of rent by the Tenant. They reiterated that no rent payments had been received by the Landlord since service of the Notice and that the Notice had not been disputed by the Tenant.

M.B. stated they tried to file an application to dispute the Notice at a Service BC office. An application number was provided by the Tenant and is included on the front page of this Decision. A review of the Dispute Management System confirms the application was filed February 10, 2023.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The Tenant stated they did not pay the rent on January 1, 2023 as they had overpaid rent throughout the tenancy and had overpaid by more than a month's rent as of January 1, 2023. No evidence was put forward by the Tenant to confirm the amount they had overpaid by or confirm their reasoning behind withholding rent was valid. There was also no explanation provided as to why rent had not been paid for February and March 2023, or that any alleged attempted payments had been rejected.

Based on the testimony from both parties and the lack of evidence to the contrary, I find that rent in the amount of \$1,400.00 was due on January 1, 2023.

Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on January 17, 2023, therefore would have been deemed received on the same day in accordance with section 90 of the Act. The effective date of the Notice is January 27, 2023

Based on testimony from both parties, I accept that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a).

Though the Tenant stated they attempted to dispute the Notice, I note that their application was filed with the Residential Tenancy Branch on February 10, 2023 which is considerably beyond the effective date of the Notice. Though the application was not submitted, had it been, section 66(3) of the Act states a time limit for disputing a notice to end tenancy can not be extended beyond the effective date of the notice itself.

I find that the Tenant did not dispute the Notice or pay the outstanding rent in full within five days of receiving the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on January 27, 2023.

The Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$4,200.00 in unpaid rent to the Landlord.

As the Landlord has been successful in their Application, I authorize the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

As the Landlord's counsel testified they do not retain a security deposit I make no order under section 38(4)(b) of the Act for the Landlord to retain the security deposit.

Conclusion

The Application is granted.

The Landlord is issued an **Order of Possession**.

The Landlord is issued a **Monetary Order**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 28, 2023

Residential Tenancy Branch