



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Epic Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) pursuant to section 46;
2. an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and,
3. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

BB appeared as agent for the corporate landlord. BB confirmed they were not recording the hearing. BB was given full opportunity under oath to be heard, to present evidence and to make submissions. The tenant did not appear at the hearing.

BB testified that they were served by the tenant with the Notice of Dispute Resolution Proceeding and indicated they have no concerns regarding service. BB testified that they served the tenant with their supporting evidence by registered mail. In support of this BB provided a Proof of Service indicating that the supporting documents were sent to the tenant by registered mail on March 23, 2023. Based on BB’s testimony, I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Matters

At the outset of the hearing, BB confirmed that the landlord’s name listed on the tenant’s application is the name of the landlord’s agent. BB confirmed the corporate landlord’s

name which is consistent with the Tenancy Agreement. Based on section 64(3)(a) of the Act, I have amended the corporate landlord's name on the tenant's application.

While the tenant did not appear at the hearing, I waited until 9:40 a.m. in order to enable the applicant tenant to connect with the teleconference which was scheduled for 9:30 a.m.

Rule of Procedure 7.3 discusses the consequences of a party not attending a hearing.

7.3 Consequences of not attending the hearing

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.

In accordance with the above, I dismiss the tenant's applications in their entirety without leave to re-apply.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

While I have considered the documentary evidence and the testimony of BB, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of BB's statements and my findings are set out below.

BB confirmed the following details of the tenancy. The tenancy commenced September 1, 2017. The landlords collected a security deposit in the amount of \$700.00 which the landlord continues to hold in trust. Monthly rent is \$1,526.00 payable on the first of each month.

BB testified that the landlord issued a 10-Day Notice by attaching it to the door of the rental unit on March 2, 2023, because the tenant failed to pay rent. BB indicated that the landlord has served many 10-Day Notices on the tenant during the tenancy. BB testified that the last time the tenant's balance was at zero was in July 2022. However, since then the tenant has been intermittently making payments and making late payments.

BB testified that when the landlord served the 10-Day Notice rent was outstanding in the amount of \$7,667.00. Since then, the tenant has not paid this month's rent, so rent is currently outstanding in the amount of \$9,193.00. BB advised that the total amount of outstanding rent does not include any late fees. BB drew my attention to the tenant ledgers included in the landlord's evidence.

BB testified that the tenant is still residing in the rental unit and therefore the landlord is seeking an Order of Possession and Monetary Order in the amount of \$9,193.00.

Analysis

I accept the undisputed testimony of BB, that the 10-Day Notice was served on the tenant by attaching it to the door of the rental unit on March 2, 2023.

Based on section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the tenant is deemed to have received the materials on March 5, 2023.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10-Day Notice. I accept BB's evidence that the 10-Day Notice was issued because the tenant failed to pay rent.

Therefore, I find on a balance of probabilities that the Notice was issued 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.

Based on the above findings, the landlord is granted an Order of Possession under section 55(1) 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.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. However, while I accept BB's evidence that the tenant has failed to pay rent, I find that BB has provided insufficient evidence to establish the total amount of outstanding rent. Save for the months of March and April 2023, I find that BB has not established which months the

tenant failed to pay rent and in what amount. On that basis, I am granting a monetary order in the amount of \$3,052.00 for the outstanding March and April rent. The landlord is entitled to apply for further compensation for unpaid rent.

In accordance with the off-setting provisions of section 72 of the Act, I order the landlords to retain the tenant's security deposit in partial satisfaction of the Monetary Order.

Conclusion

The landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlords' favour in the amount of \$2,352.00 as follows:

Item	Amount
Rent due March and April 2023 (2 x \$1,526.00)	\$3,052.00
Security Deposit	(700.00)
Total Monetary Order	\$2,352.00

The tenant must be served with the Order of Possession as soon as possible. Should the tenant fail to comply with the Order of Possession, 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: April 11, 2023

Residential Tenancy Branch