



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SELECT REAL ESTATE and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, RR, RP, OLC

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, for a rent reduction, and for an Order requiring the Landlord to make repairs.

The Agent for the Landlord stated that the Tenants did not serve the Landlord with their Application for Dispute Resolution.

The Landlord filed in Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution. The Tenant with the initials “JG” is the only Respondent named in the Landlord’s Application for Dispute Resolution. As such, any Orders granted on the basis of the Landlord’s Application for Dispute Resolution will only name “JG”.

The Agent for the Landlord stated that on December 01, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch by the Landlord on November 17, 2022 was sent to “JG” at the rental unit, via registered mail, 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 to “JG” in accordance with section 89 of the *Residential Tenancy Act (Act)*, however “JG”

did not appear at the hearing. As the documents were properly served to “JG”, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of “JG”.

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 he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was affirmed that he would not record any portion of these proceedings.

Preliminary Matter #1

As the Tenants did not attend the hearing in support of their Application for Dispute Resolution and they did not establish that their Application for Dispute Resolution was served to the Landlord, I find that they have failed to diligently pursue their Application for Dispute Resolution. I therefore dismiss the Tenants’ Application for Dispute Resolution, without leave to reapply.

As the Tenants did not attend the hearing to establish the evidence they submitted to the Residential Tenancy Branch was served to the Landlord, I have not accepted their evidence as evidence for these proceedings.

Preliminary Matter #2

At the hearing the Agent for the Landlord applied to amend the Application for Dispute Resolution to include a monetary Order for all rent that is currently due.

I find that it was reasonable for the “JG” 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

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that the Tenant agreed to pay monthly rent of \$1,400.00 by the first day of each month, and that no rent has been paid for the period between August 01, 2022 and January 31, 2023.

The Agent for the Landlord stated that on October 04, 2022 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit, which declares that the rental unit must be vacated by October 14, 2022. He stated that the unit has not been vacated.

Analysis

On the basis of the undisputed evidence, I find that "JG" was required to pay monthly rent of \$1,400.00 by the first day of each month and that no rent has been paid for the period between August 01, 2022 and January 31, 2023.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As no evidence was presented to establish that "JG" was not obligated to pay rent for the period between August 01, 2022 and December 31, 2022, I find that "JG" currently owes \$7,000.00 in rent for that period.

I find that the "JG" also owes rent for the period between January 01, 2023 and January 17, 2023, in the amount of \$767.62. (17 days x daily rent of \$45.16) I am unable to order the "JG" to pay any rent for the period after January 17, 2023, as it is possible the rental unit will be vacated today. If the unit is not vacated, the Landlord retains the right to file another Application for Dispute Resolution for lost revenue.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the rent was outstanding on October 01, 2022, I find that the Landlord had the right to serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on October 04,

2022. I find that this was proper notice of the Landlord's intent to end the tenancy pursuant to section 46(1) of the Act.

As the Tenant has not paid the outstanding rent that was due on October 04, 2022, I find that the tenancy should end pursuant to section 46(1) of the Act and I grant the Landlord an Order of Possession.

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

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective two days after it is served upon "JG". This Order may be served to "JG", 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 \$7,867.72, which includes \$7,767.72 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$7,867.72. In the event "JG" does not comply with this Order, it may be served on "JG", 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: January 17, 2023

Residential Tenancy Branch