



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD; CNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated September 4, 2015 ("10 Day Notice") pursuant to section 46.

"Landlord DDS" and "landlord DS" (collectively "landlords") and the tenant and his advocate, LO (collectively "tenant") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses. Landlord DDS was named as an individual landlord in the landlords' application and represented himself and the landlord company at this hearing, while landlord DS represented the landlord company named in both applications. The tenant confirmed that his advocate had authority to speak on his behalf at this hearing.

Landlord DDS confirmed that he witnessed landlord DS personally serve the tenant with the landlords' application for dispute resolution hearing package on September 23, 2015. The tenant confirmed that he did not receive the landlords' application. As the landlords provided affirmed testimony regarding witnessed service of the landlords' application, I find that the tenant was deemed served with the landlords' application on September 23, 2015 in accordance with section 89 of the *Act*.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application.

The tenant confirmed receipt of the landlords' 10 Day Notice on September 4, 2015, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on September 4, 2015.

Preliminary Issue – Adjournment Request by Tenant

During the hearing, the tenant made a verbal request for an adjournment of this hearing. The tenant stated that he was not served with the landlords' application or written evidence and he did not have notice of their application for this hearing. During the hearing, I reviewed with both parties, in detail, the written evidence submitted by both parties and determined that the evidence was the same. The tenant insisted that there might have been additional evidence submitted by the landlords that he was not aware of, despite the landlords' testimony that no further written evidence was submitted or would be relied upon at this hearing. The landlords opposed the tenant's adjournment request, stating that there was greater prejudice to the landlords in adjourning this matter, that there were significant rental arrears owing and that they had already waited a lengthy time for this hearing date.

During the hearing, I advised the parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 6.4 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;*
- (b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);*
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
- (d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- (e) the possible prejudice to each party...*

In reaching my decision, I find that the prejudice to the landlords would be greater than the prejudice to the tenant, if this hearing were not to proceed as scheduled. I find that this hearing involves an urgent issue, regarding a possible end to this tenancy and an order of possession. It is not simply a monetary claim, although it does involve unpaid rent. Earlier in this decision, I determined that the tenant was deemed served with the landlords' application and written evidence, as it was witnessed by both landlords who provided affirmed testimony at this hearing. As the parties have been waiting for this hearing date since the tenant filed his application first on September 8, 2015, it is a matter that must be dealt with as soon as possible. Most importantly, I find that the tenant had notice of the landlords' claims, prior to this hearing date. The tenant was already aware of the landlords' 10 Day Notice, filed an application to dispute it and attended this hearing in order to determine whether his tenancy would end. If the landlords had not filed an application, they still had the ability to make a verbal request at this hearing for an order of possession, pursuant to section 55 of the *Act*, without prior notice to the tenant. Therefore, the 10 Day Notice and a possible end to this tenancy would have been addressed at this hearing, regardless of whether the landlord made a formal application, because the tenant applied to cancel the 10 Day Notice. Further, I find that the tenant was aware of the landlords' monetary claim for unpaid rent prior to this hearing, as the tenant indicated in his own application that he wanted to address rental arrears at this hearing.

Preliminary Issue – Amendment of Landlords' Application

During the hearing, the landlords requested an amendment to their application, to increase the monetary claim sought from \$350.00 to \$2,944.00. The landlords initially applied for a monetary order of \$350.00, stating that they inadvertently only included the security deposit amount, rather than the full rent owing of \$2,944.00. The landlords noted that the above full rent amount was indicated on the 10 Day Notice served upon the tenant. The tenant consented to the landlords' adjournment request, indicating that he was aware of the amount of rent in dispute and that he was prepared to deal with all unpaid rent at this hearing. In accordance with section 64(3)(c) of the *Act* and based on the tenant's consent to the landlords' adjournment request, I amended the landlords' application to increase the monetary claim sought from \$350.00 to \$2,944.00 total.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below. Both parties agreed that this tenancy began on July 1, 2014. Both parties agreed that monthly rent in the current amount of \$700.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement governs this tenancy but neither party provided a copy for this hearing.

The landlords issued the 10 Day Notice, indicating that rent in the amount of \$2,944.00 was due on September 1, 2015. The notice indicates an effective move-out date of September 15, 2015.

Both parties agreed that a previous hearing was held with respect to this tenancy on May 7, 2015, whereby another Arbitrator issued a decision on the same date. The file number for that hearing appears on the front page of this decision. Both parties provided copies of the previous decision for this hearing. Both parties disagreed as to orders regarding rent made by the Arbitrator. However, neither party filed for a correction, clarification or review of the decision. That decision dealt with a 10 Day Notice, dated March 20, 2015, for unpaid rent of \$2,925.00, and applications made by both parties regarding a possible end to tenancy and unpaid rent.

The landlords testified that the decision was unclear as to the rent owed. The landlords seek a monetary order of \$2,944.00 for unpaid rent from the tenant. The landlords maintained that the tenant owes \$700.00 for rent from the beginning of this tenancy on July 1, 2014 until the present date, totalling \$2,944.00, after taking into account the rental amounts paid by the tenant throughout the tenancy.

The tenant maintained that his rent was only \$375.00 per month until he received a SAFER (Shelter Aid for Elder Renters program) grant, after which he would owe \$700.00 per month for rent. The tenant noted that he was only required to pay \$325.00,

the difference in rent between \$375.00 and \$700.00, once he got a SAFER grant, which occurred in February 2015. The tenant stated that he only owes rental arrears of \$325.00 per month for each month from February 2015 to July 2015 and full rent of \$700.00 from August 2015 to present.

Both parties agreed that the tenant paid rent of \$375.00 each month from February until June 2015. Both parties agreed that the tenant paid the landlords \$1,822.90 towards rent in July 2015. The tenant stated that this payment was to cover the rent owing of \$325.00 per month from February 2015 to July 2015, while the landlords stated that the tenant intended to pay off the total rental arrears of \$2,944.00. Both parties agreed that the tenant paid \$616.30 in August 2015 and \$616.00 in September 2015 towards rent. Both parties agreed that the tenant paid full rent of \$700.00 for each of October and November 2015.

Analysis

Section 46(4) of the Act states that the tenant had five days after receiving the 10 Day Notice to dispute it by making an application for dispute resolution. The tenant filed his application on September 9, 2015 after receiving the 10 Day Notice on September 4, 2015. Therefore, the tenant is within the five day time limit under the Act. The burden of proof, on a balance of probabilities, falls upon the landlords to establish that the 10 Day Notice was issued for a valid reason: that the tenant failed to pay the amount of rent owing.

Arbitrator's Previous Decision

The Arbitrator at the previous hearing stated the following which I have quoted from his decision at page 4 (my emphasis added):

Therefore, I accept the landlord's submission that a verbal promise was made to this tenant that until his SAFER grant "kicked in" the tenant was entitled to pay rent in the amount of \$375.00. I also accept that this term was contingent on the tenant's agreement that once his SAFER grant "kicked in" he would be responsible to pay to the landlord the difference between the amounts paid (\$375.00 per month) and the full rent as per the tenancy agreement (\$700.00).

...

As the landlord has provided no evidence that any amounts other than the \$325.00 per month difference was outstanding, I find that the landlord has failed to establish that at the time the landlord issued the 10 Day Notice to End

Tenancy for Unpaid Rent on March 20, 2015 the tenant owed the landlord any rent.

As such, I find that the notice is not enforceable. I further find that, at this time, the tenant does not owe the landlord any monies for the difference in rent amounts – only because the tenant's SAFER grant has not yet "kicked in."

Therefore, until such time as the SAFER grant "kicks in" I order that the tenant is obligated to pay the landlord rent in the amount of \$375.00 per month and once the grant "kicks in" the rent will be \$700.00 per month as per the written tenancy agreement.

If the tenant is approved for SAFER he must, as per the terms of the verbal agreement, pay the landlord the difference in rent for the full period that he has received the benefit of the reduced rent.

Clearly, the amount owed to the landlord after the grant "kicks in" will be substantial and as such I am confident the landlord will enter into a payment agreement with the tenant that he will be reasonable able to afford.

Interpretation of Arbitrator's Previous Decision

I find that any rent owed from the beginning of this tenancy on July 1, 2014 until May 2015, is *res judicata* at this hearing, which means it was already decided by the previous Arbitrator. As such, I am bound by that previous decision.

I find that the Arbitrator's previous decision clearly states that the rent for this tenancy is \$375.00 per month until the tenant receives a SAFER grant. When the tenant receives the SAFER grant, the rent becomes \$700.00 per month. The Arbitrator determined that no rent was owed, subject to the below exception, at the time of the hearing in May 2015 with respect to the March 2015 10 Day Notice for \$2,925.00 in unpaid rent. The Arbitrator confirmed that the only rental arrears owing for the above period would be at the time when the SAFER grant came into effect. This amount would be \$325.00 per month, which is the difference between \$375.00 and \$700.00.

The tenant confirmed that his SAFER grant was provided in February 2015. The landlords did not dispute this fact, indicating they assumed he received it in June 2015, as his first lump sum payment for rent was made in July 2015. Therefore, I find that the tenant received the SAFER grant as of February 1, 2015.

In enforcing the Arbitrator's previous decision, I am permitted to determine the rental arrears owed, due to the SAFER grant being issued. The SAFER grant was not issued at the time of the previous hearing. As such, I find that the tenant is only responsible for paying rental arrears of \$325.00 per month from February 2015 to July 2015, which the tenant agreed that he owed. From August 2015 to present, both parties agreed that the tenant began owing \$700.00 per month and he made payments towards this monthly rent.

The landlords stated that the Arbitrator's previous decision indicated a "substantial amount" would be owed by the tenant when the SAFER grant came into effect and that this entitles them to monthly rent of \$700.00 from the beginning of this tenancy to present. I disagree. The Arbitrator at the previous hearing did not know when the SAFER grant would be issued to the tenant and suggested that the landlords could enter into a payment arrangement with the tenant so that he could pay the arrears owing. The SAFER grant was received in February 2015, not an earlier date. The parties were unable to agree to a payment arrangement. I find that the Arbitrator's comments regarding the "substantial amount" is in relation to when the SAFER grant was received and does not override the Arbitrator's order regarding rent of \$375.00 until the SAFER grant came into effect, at which time the rent would be \$700.00 per month.

10 Day Notice

For the above reasons, I find that the landlords issued an invalid 10 Day Notice. I find that the total amount indicated on the 10 Day Notice of \$2,944.00 was incorrect, as it accounts for rental arrears from July 1, 2014 to present at a monthly rent of \$700.00. The rent was only \$375.00 per month from July 1, 2014 to January 31, 2015, as per the Arbitrator's previous decision, and both parties agreed that the tenant paid that monthly amount. The rent changed to \$700.00 per month as of February 1, 2015 to present. As of September 1, 2015, the unpaid rent owed was \$669.80, as per the below monetary chart and this would have been the correct amount for the landlords to indicate on the 10 Day Notice, which they failed to do.

Therefore, the tenant did not have proper notice of the correct amount of rent due, such that he could pay the correct amount owed to the landlords. Accordingly, I find that the landlords' 10 Day Notice, dated September 4, 2015, is invalid and the tenant's application to cancel the notice is allowed. The landlords' 10 Day Notice, dated September 4, 2015, is cancelled and of no force or effect. The landlords' application for an order of possession for unpaid rent based on the 10 Day Notice, dated September 4, 2015, is dismissed without leave to reapply.

Monetary Order

The landlords sought a monetary order of \$2,944.00 for unpaid rent. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Residential Tenancy Regulation* or the tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the testimony of both parties regarding the amount of rent paid by the tenant and given my findings as to the correct amount owing for rent as per the Arbitrator's previous decision, I find that the tenant owes rent to the landlords as per the monetary chart below:

| Month | Monthly Rent Owed | Rent Paid by Tenant | Rent Arrears per month | Balance Due |
|----------------|-------------------|---------------------|------------------------|-----------------|
| | | | | |
| February 2015 | \$700.00 | \$375.00 | 325.00 | \$325.00 |
| March 2015 | 700.00 | 375.00 | 325.00 | 650.00 |
| April 2015 | 700.00 | 375.00 | 325.00 | 975.00 |
| May 2015 | 700.00 | 375.00 | 325.00 | 1,300.00 |
| June 2015 | 700.00 | 375.00 | 325.00 | 1,625.00 |
| July 2015 | 700.00 | 1,822.90 | 197.70 | 502.10 |
| August 2015 | 700.00 | 616.30 | 83.70 | 585.80 |
| September 2015 | 700.00 | 616.00 | 84.00 | 669.80 |
| October 2015 | 700.00 | 700.00 | 0.00 | 669.80 |
| November 2015 | 700.00 | 700.00 | 0.00 | 669.80 |
| | | | | |
| Total | \$7,000.00 | \$6,330.20 | | \$669.80 |

Therefore, I find that the landlords are entitled to \$669.80 in rental arrears for the above period.

To ensure clarity between the parties, the above chart and current outstanding rent amount of \$669.80 deals with any rent owed by the tenant to the landlords from the beginning of this tenancy on July 1, 2014 until November 30, 2015. As this rent issue has now been decided, any future disputes regarding rent will be from the period of December 1, 2015 forward.

As this tenancy is continuing, I decline to offset the above monetary order with the security deposit of \$350.00 currently being held by the landlords. The security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*. I dismiss the landlords' application to retain the tenant's security deposit in partial satisfaction of the monetary award.

Conclusion

The tenant's application to cancel the landlords' 10 Day Notice, dated September 4, 2015, is allowed. The landlords' 10 Day Notice, dated September 4, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords' application for an order of possession for unpaid rent based on the 10 Day Notice, dated September 4, 2015, is dismissed without leave to reapply.

The landlords' application to retain the tenant's security deposit is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$669.80 against the tenant in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, 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: November 10, 2015

Residential Tenancy Branch

