



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOUNTAINVIEW APARTMENTS

DECISION

Dispute Codes CNR, FF

Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the landlord's two 10 day notices to end tenancy for unpaid rent, dated February 6, 2016 ("first 10 Day Notice") and March 15, 2016 ("second 10 Day Notice") (collectively "two 10 Day Notices"), pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

"Tenant EB" did not attend this hearing, which lasted approximately 52 minutes. The other tenant LM, ("tenant") and the landlord's two agents, landlord DR ("landlord") and "landlord PT" attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The landlord confirmed that he is the building manager and landlord PT confirmed that he is the property manager for the landlord company named in this application (also referred to as "landlord" in this decision). Both of the landlord's agents confirmed that they had authority to represent the landlord company at this hearing. The tenant did not confirm that he had authority to represent tenant EB as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution, amendment to the tenants' application and hearing notice. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application, amendment and hearing notice.

The tenant testified that on March 22, 2016 he personally served the landlord with a written evidence package, which included a written tenancy agreement and four receipts issued by the landlord between January and March 2016. The landlord testified that he did not receive the tenant's written evidence package. Although the

landlord stated that he did not receive the tenant's written evidence package, he did not dispute the existence of the written tenancy agreement. The landlord signed the tenancy agreement and should have a copy of it. For these reasons, I considered the written tenancy agreement in my decision. I did not consider the tenant's rent or security deposit receipts in my decision because the tenant could not provide corroborating evidence, such as witness testimony, to support service of the receipts, the landlord said that he did not receive them from the tenant, and the landlord disputed the existence of some of the receipts. I find that the landlord may not have been in possession of the receipts from earlier in the tenancy. In any event, I find that the receipts are irrelevant to this matter.

The tenant confirmed personal receipt of the landlord's first 10 Day Notice on February 6, 2016. The tenant confirmed receipt of the landlord's second 10 Day Notice by way of registered mail on March 15, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's two 10 Day Notices. I find that tenant EB was served with the first 10 Day Notice on February 6, 2016, as it was served to the tenant, who was a person residing with tenant EB, as per section 88(e) of the *Act*. I find that tenant EB was deemed served in accordance with sections 88 and 90 of the *Act*, with the second 10 Day Notice on March 20, 2016, five days after its registered mailing to the rental unit, as the landlord provided a Canada Post receipt and tracking number as proof of service.

During the hearing, I asked both parties to send copies of the two 10 Day Notices to me after the hearing because neither party had submitted them prior to the hearing. I received copies of the two 10 Day Notices from both parties and I considered them in my decision. I also received additional evidence from both parties aside from the two 10 Day Notices. I did not consider this additional evidence in my decision because I did not request this evidence to be sent and neither party had notice of what the other party was sending in order to respond to the evidence.

Issues to be Decided

Should the landlord's two 10 Day Notices be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

The tenant testified that the tenancy began January 1, 2016 on a month-to month basis, while the landlord testified that it began in May 2015. As per the written tenancy agreement, monthly rent in the amount of \$995.00 is payable on the first day of each month. The tenant, tenant EB and the landlord signed the agreement on January 23, 2016. Although the tenancy agreement provides a place to indicate the start of the tenancy, this portion of the agreement remains blank and neither party could explain why at the hearing. The tenant continues to reside in the rental unit.

The tenant testified that on January 2, 2016 he remitted a \$490.00 security deposit to the landlord and was issued a receipt for this. The landlord disputes that the tenant paid a security deposit in the amount of \$490.00 and denied the existence of any receipt. The landlord testified that a security deposit in the amount of \$480.00 was previously collected from tenant EB and her previous roommate at the start of their original tenancy some time ago. The landlord could not recall the actual date of collection and confirmed he was still in possession of this deposit.

The tenant stated that he did not live at this rental unit prior to January 1, 2016, he maintained his own residence at a separate address and was only a guest at the rental unit. The tenant explained that it was not until January 2016 that he became a tenant pursuant to a signed written tenancy agreement and he began sharing the rental unit with tenant EB.

The tenant explained that prior to becoming a tenant of the rental building, he visited tenant EB and her roommate and in their absence, would sometimes care for the rental unit. In caring for the unit between mid-June and December 2015, he said that he would occasionally spend the night and pay the rent on the other tenants' behalf. It is the landlord's position that the tenant was not a guest during this time but rather a tenant.

The landlord testified that he entered into a verbal agreement with the tenant on an unknown date in an attempt to recover the unpaid rent for September and October 2015. The landlord testified that the tenant agreed to pay the rent arrears on the condition that the landlord rectifies the noise issue with the neighbours by December 2015. The landlord testified that he rectified the noise issue by the agreed upon date however the tenant did not pay the rent arrears. The tenant did not confirm or deny this specific arrangement, rather he explained in his role as a guest he did sometimes engage in conversations with the landlord to assist the tenants of the rental unit with tenancy issues.

The landlord testified that the tenant withheld rent of \$995.00 for each month from September to October 2015. The tenant disputed withholding rent for September and October 2015 and reiterated that he was not a tenant during this time period. The tenant testified that he had no knowledge whether the other two tenants paid September and October rent.

On February 6, 2016, the landlord issued the first 10 Day Notice, indicating that rent in the amount of \$2,645.00 was due on February 1, 2016. The notice indicates an effective move-out date of February 16, 2016. The landlord explained that the first 10 Day Notice was issued for the non-payment of September and October 2015 rent and it was addressed to both the tenant and tenant EB. On March 15, 2016, the landlord issued the second 10 Day Notice, indicating the same amount in rent arrears was due on March 1, 2016. This second 10 Day Notice was issued to tenant EB only, not the tenant.

Both parties agreed that rent from January to April 2016 was paid in full.

Analysis

Tenant's Application

Although the parties provided conflicting testimony on the tenancy start date, they both agreed that they signed a written tenancy agreement on January 23, 2016. Because the landlord failed to provide documentary evidence, such as a written tenancy agreement, for an earlier tenancy start date, I find that the landlord's tenancy with the tenant commenced on January 1, 2016, as per the tenant's testimony. I also find that the tenant became a co-tenant of tenant EB upon the commencement of tenancy on January 1, 2016. I find January 1, 2016 to be the most probable and reasonable date, given that the parties' written tenancy agreement was signed on January 23, 2016 and that rent was paid in full by the tenant for all of January 2016. Accordingly, I find that the landlord's two 10 Day Notices issued to the tenant are not valid against him because he was not a tenant during September or October 2015, so he was not responsible for the rent for those months that the landlord was seeking in the two 10 Day Notices. Further, the second 10 Day Notice was not even addressed to the tenant.

For the above reasons, I allow the tenant's application to cancel the landlord's two 10 Day Notices and I find that the landlord is not entitled to an order of possession against the tenant.

Tenant EB's Application

I find that both the tenant and landlord provided undisputed evidence at the hearing that tenant EB occupied the rental unit prior to January 2016. Although no clear evidence in regard to tenant EB's tenancy start date was presented, the landlord confirmed receipt of a security deposit from tenant EB at the start of her tenancy, prior to January 2016. The tenant referred to visiting tenant EB and caring for the unit in her absence prior to his tenancy start date of January 2016, specifically in September and October 2015, the months when the landlord is seeking rent as per the two 10 Day Notices.

Based on a balance of probabilities and for the reasons stated above, I find that tenant EB was a "tenant" at the rental unit at the time that rent was due to the landlord in September and October 2015.

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

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 the absence of any evidence or submissions from tenant EB, I order tenant EB's entire application dismissed without leave to reapply.

I find that the landlord's two 10 Day Notices comply with section 52 of the *Act* and are enforceable against tenant EB. Because I have found that she is a co-tenant with the tenant, when her tenancy ends his tenancy must also end. I find that the landlord is entitled to an order of possession against all occupants, including the tenant, pursuant to section 55 of the *Act*, effective two days after service on tenant EB. Should tenant EB or anyone on the premises (including the tenant) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the tenant was successful and tenant EB was unsuccessful at this hearing, I find that both tenants are not entitled to recover the \$100.00 filing fee for their application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on tenant EB**. Should tenant EB or anyone on the premises fail to comply with this Order,

this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application to cancel the landlord's two 10 Day Notices is allowed.

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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 18, 2016

Residential Tenancy Branch