



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

On October 3, 2016, the landlord's application for dispute resolution was heard by the direct request process. The landlord was granted an order of possession and a monetary order based on unpaid rent.

On November 7, 2016, the tenant made an application for review consideration, which was granted on the basis that they have new and relevant evidence. The Arbitrator ordered the parties to participate in a new hearing, and the original decision was suspended. The Arbitrator at the new hearing may confirm, vary or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, and for a monetary order for unpaid rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

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

Background and Evidence

The landlord's agent testified that the tenant was served with a notice to end tenancy for non-payment of rent on September 6, 2016, by posting to the door. The agent stated that the tenant was in the rental unit at the time; however, did not answer the door when

they attempted to serve the document. The landlord stated that this was a common throughout the tenancy.

The landlord's agent testified that the tenant did not dispute the notice and rent was not paid within the statutory time limited. The agent stated that the tenancy legally ended on September 20, 2016, and there is no authority for the Residential Tenancy Branch to reinstate a tenancy once legally ended.

The landlord's agent testified that they accepted rent on October 30, 2016, for outstanding rent and all rent collected has been for use and occupancy only. The agent stated that although they appreciate the tenant has mental health issues they are not responsible to monitor the tenant's mental health as they are not social workers, case workers, outreach workers or family and they have a duty to the owner and other renters.

The tenant's agent testified that the tenant received the notice to end tenancy on September 6, 2016. The agent stated the tenant could not dispute the notice as the tenant was hospitalized on September 13, 2016, which was within the ten day period they had to dispute the notice. The agent stated that the tenant is now getting proper medical care and their family is willing to guarantee the rent for the tenant.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant had not paid the outstanding rent, did not apply to dispute the notice within five days, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

While I accept that there may have been exceptional circumstance, which lead to the hospitalization of the tenant on September 13, 2016; however, the tenant was required to pay the rent or dispute the notice by September 11, 2016, as the evidence support the notice to end tenancy was received by the tenant on September 6, 2016.

Under section 66 (1) of the Act, only in exceptional circumstances, such a hospitalization, the Arbitrator may extend a time limit established by this Act. However, the tenant did not make an application for dispute resolution to be allowed more time that make that application. Even if I accept the purpose of the filing the Application for a

Review Consideration was to dispute the notice that application was filed on November 7, 2016, well beyond the effective date of the notice.

Under section 66(3) of the Act, the Arbitrator must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

As a result, I find there is no authority under the *Act*, that would allow me to reinstate the tenancy, which legally ended under the *Act* on September 20, 2016. Therefore, I confirm the order of possession issued on October 3, 2016. The order stands and remains in full force and effect.

As the evidence supports all rent has been paid as of the date of the hearing. I find it appropriate to cancel the monetary order issued on October 3, 2016.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The order of possession issued on October 3, 2016, is confirmed and remains in full force and effect. The monetary order issued on October 3, 2016, is cancelled.

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 04, 2017

Residential Tenancy Branch