



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, MT, OPR, MNR, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and more time to make the application; and, authorization to reduce rent for repairs, services or facilities not provided. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

1. Naming of parties

Both applications indicated there were two tenants; however, I determined that one of the named tenants, referred to by initials AW, was actually an occupant of the rental unit but had not entered into a tenancy agreement with the landlord. AW is the tenant's son and was present for the hearing. I amended the applications to exclude AW as a named party but AW was permitted to remain for the duration of the hearing.

2. Extension of time to file tenant's application

Upon receiving a 10 Day Notice, a tenant has five days to pay the outstanding rent to nullify the Notice or file an Application for Dispute Resolution within five days of receiving the Notice. Pursuant to section 46(5) of the Act, where a tenant does not pay the outstanding rent or file to dispute the Notice within five days, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and the tenant must vacate the rental unit by the effective date.

The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent that was signed and dated by the landlord's agent on December 7, 2016. In filing the tenant's application, the tenant indicated that he received a 10 Day Notice on December 8, 2016. Since the tenant received the 10 Day Notice on December 8, 2016 the tenant had until December 13, 2016 to either pay the outstanding rent to nullify the Notice or file an Application to dispute it. The tenant did not pay

the outstanding rent. Rather, the tenant's case manager attempted to file an Application for Dispute Resolution on behalf of the tenant on December 13, 2016; however, all of the information necessary to process the tenant's application for fee waiver was not received by the Residential Tenancy Branch until December 21, 2016. Rule 2.6 of the Rules of Procedure provides that an Application for Dispute Resolution is considered to be submitted when the filing fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch. Accordingly, the tenant's application was filed after the time limit for doing so.

Section 66 of the Act permits the Director to grant an extension of time to file an Application in limited circumstances. The tenant requested an extension and I have considered whether an extension is applicable in the circumstances. Section 66 provides:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:

(a) the extension is agreed to by the landlord;

(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director 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.

[Reproduced as written with my emphasis underlined]

The stated effective date on the 10 Day Notice reads December 17, 2016; however, under section 53 of the Act an incorrect effective date automatically changes to comply with the Act. Since the tenant received the 10 Day Notice on December 8, 2016 the effective date is automatically changes to read December 18, 2016.

In this case, I heard that the tenant is a bed-bound quadriplegic and I am satisfied that filing an application within a short amount of time has its challenges due to the tenant's physical restrictions and those restrictions may be considered an exceptional circumstance; however, subsection 66(3) prevents me from granting an extension beyond the effective date of the notice which is December 18, 2016. Since the tenant's Application was not fully submitted until December 21, 2016 I find the tenant surpassed the time limit for filing to dispute the Notice and

seeking an extension. Therefore, I cannot grant the extension and I must decline to consider the tenant's Application to cancel the 10 Day Notice.

Having dismissed the tenant's Application to cancel the 10 Day Notice, I proceed to consider whether the landlord is entitled to an Order of Possession under section 55 of the Act.

3. Tenant's request for a rent reduction

The tenant applied for authorization to reduce rent for repairs, services or facilities not provided. The tenant did not provide any particulars as to the repairs that have not been made or the services or facilities that he is entitled to under the tenancy agreement that the landlord has not been provided. The tenant had made reference to the landlord's refusal to process a rent subsidy application; however, a rent subsidy application is not a "service or facility" as defined in section 1 of the Act. Accordingly, I did not further consider the tenant's request for a rent reduction for repairs or services or facilities not provided. However, I have considered the tenant's position in considering the landlord's request for a Monetary Order for unpaid rent.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent in the amount claimed?

Background and Evidence

The landlord and the tenant, along with his now deceased spouse, entered into a tenancy agreement on November 17, 2003. The tenants paid a security deposit of \$392.50 and the rent was set at \$785.00 per month, payable on the first day of every month. Over the years the rent was increased with the most recent increase requiring the tenants to pay rent of \$1,029.00 per month. The tenant's spouse died in the few months preceding December 2016 and rent continued to be paid until December 2016.

For the month of December 2016 the landlord attempted to debit the account of the deceased tenant for the monthly rent but the payment was rejected due to insufficient funds. The landlord had received \$402.13 from the Ministry on behalf of the tenant and this was applied to December 2016 rent, leaving a balance of \$626.87 outstanding.

On December 7, 2016 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent indicating \$657.87 in rent was outstanding as of December 1, 2016. The landlord explained that this sum includes an NSF fee of \$25.00 and as seen in the ledger summary report submitted into evidence. The 10 Day Notice was posted to the tenant's door on December 7, 2016. The tenant acknowledged that the 10 Day Notice was found by a home worker and presented to him on December 8, 2016.

The 10 Day Notice names the tenants as being: the deceased tenant and AW. The remainder of the 10 Day Notice appears to be duly completed. The tenant pointed out that the landlord did not properly name the tenant on the 10 Day Notice. The landlord explained that the landlord was unaware that the tenant's spouse had died when the 10 Day Notice was issued and AW's name was inserted on the 10 Day Notice due to a computer glitch.

During the hearing, the tenant attempted to present evidence as to attempts to apply for a rent subsidy as a basis for cancelling the 10 Day Notice; however, as described earlier in this decision, the tenant filed to dispute the 10 Day Notice well after the time limit for doing so and beyond the extension deadline and I have dismissed his application to cancel the Notice. Accordingly, in considering the landlord's request for an Order of Possession the relevant issue before me is whether the landlord issued a valid Notice.

The landlord acknowledged payment of \$402.13 that was received from the Ministry on December 22, 2016 on behalf of the tenant for the month of January 2017 and that payment has been applied to use and occupancy for the month of January 2017. Accordingly, the landlord seeks a Monetary Order for the balance of rent outstanding for December 2016 in the amount of \$626.87; loss of rent of \$626.87 for the month of January 2017; plus, a \$25.00 NSF fee for December 2016. The landlord did not apply to retain the security deposit and indicated that it will remain in trust to be administered in accordance with the Act.

As for the rent owed to the landlord, the tenant again pointed to his attempts to apply for a rent subsidy. The landlord does provide rental unit that are part of a rental subsidy program under an operating agreement with BC Housing. However, I heard from the landlord that all of the required information was not submitted by the tenant and/or all adult occupants of the rental unit. The tenant stated that some documents had been submitted to the landlord for purposes of applying for rental subsidy but acknowledged that failure to file tax returns was an issue in providing all of the required information. I also heard that another attempt to apply for subsidy was made in December 2016 by the tenant's case manager but the application was refused by the landlord. The landlord explained that an application for subsidy cannot be considered if rent is in arrears, which it was in December 2016. Further, any rent subsidy the tenant may obtain would not be retroactive. The landlord explained that it is bound to follow the terms of an operating agreement with BC Housing. I cautioned the tenant that the landlord's explanation appeared to be reasonable to me but that in any event my jurisdiction does not extend to determining whether the landlord has complied with the BC Housing operating agreement.

The parties explored possible vacancy dates during the hearing in the event the landlord succeeds in obtaining an Order of Possession. The landlord requested an Order of Possession effective on January 31, 2017. The tenant requested a few weeks longer taking into account his disability. Both parties appeared to come to an agreement that if the landlord receives \$402.13 from or on behalf of the tenant on or before January 31, 2017 the tenant will be permitted occupancy until February 15, 2017.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The landlord has applied for an Order of Possession under section 55(2) of the Act. Section 55(2) provides:

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[Reproduced as written with my emphasis underlined]

Where a landlord gives a tenant a Notice to End Tenancy the following requirements must be met in order for the Notice to be effective, as provided under section 52 of the Act:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- ...
- (e) when given by a landlord, be in the approved form.

The Notice to End Tenancy before me is signed and dated by the landlord, indicates the rental unit address, has an effective date and is in the approved form. However, the tenant raised an

issue with the naming of tenants on the 10 Day Notice and I have considered that position below.

The landlord named one of the tenants identified on the tenancy agreement although that tenant is now deceased. However, the death of a tenant does not automatically end a tenancy. As seen in section 1 of the Act, the definition of tenant is as follows:

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

Given that a tenant includes the estate of a deceased tenant, I am satisfied that it was reasonable for the landlord name the deceased tenant on the 10 Day Notice, especially considering the landlord stated that she was unaware the at the tenant was deceased at that time.

AW, the tenant's son and occupant is not a tenant but was also named on the 10 Day Notice instead of the tenant and this was incorrect; however, section 68(1) permits the Director amend a Notice to End Tenancy. Section 68(1) states:

68 (1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

In this case, the tenant did receive the 10 Day Notice and filed to dispute the Notice, albeit late; however, the late filing was not attributable to the omission of the tenant's name on the 10 Day Notice. Upon hearing from the tenant, I was satisfied that he understands that he is a tenant under the tenancy agreement and that he was aware that his name was omitted from the Notice when it should have been. Accordingly, I am satisfied that the tenant was not prejudiced by the omission of his name and I find that it is reasonable to amend the Notice in the circumstances. Therefore, I amend the Notice to name the tenant in place of his son's name. In light of all of the above, I am satisfied that the landlord has issued a valid 10 Day Notice, as amended, and that the time period for disputing the 10 Day Notice expired; thus, the criterion of section 55(2) have been met and I provide the landlord with an Order of Possession. With this decision I provide the landlord with an Order of Possession effective January 31, 2017 that may be served and enforced if the landlord does not receive \$402.13 from or on behalf of the tenant by January 31,

2017. I also provide the landlord with an Order of Possession effective February 15, 2017 that may be served and enforced in any event.

I am satisfied that the tenant failed to pay the full amount of rent due to the landlord for the months of December 2016 and January 2017 and the amount is as submitted by the landlord since the tenant did not have a rent subsidy in place. I award the landlord recovery of the balance owing of \$626.87 for December 2016 and \$626.87 for January 2017. As for the NSF fee, term 3(d) of the tenancy agreement provides that the fee is \$20.00 rather than \$25.00. Accordingly, I award the landlord a \$20.00 NSF administration fee. I further award the landlord recovery of the \$100.00 filing fee. The landlord's total award is \$1,373.74 and the landlord is provided a Monetary Order for that amount. As stated previously, the security deposit remains in trust, to be administered in accordance with the Act.

Conclusion

The tenant's application to dispute a 10 Day Notice was dismissed as it was filed beyond the time limit for disputing a 10 Day Notice and beyond the extension limitation imposed by section 66(3) of the Act.

The landlord was provided an Order of Possession effective January 31, 2017 that may be served and enforced if the landlord does not receive \$402.13 from or on behalf of the tenant by January 31, 2017 for use and occupancy of the unit until February 15, 2017. If payment is received the landlord may serve and enforce the Order of Possession that has an effective date of February 15, 2017.

The landlord has been provided a Monetary Order in the sum of \$1,373.74 for unpaid and/or loss of rent for the months of December 2016 and January 2017, an NSF fee, and recovery of the filing fee. The security deposit remains in trust to be administered in accordance with the Act.

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 20, 2017

Residential Tenancy Branch