



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JUST VIRANI CONSULTING INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of documents as explained below.

The Landlord provided a Proof of Service of Notice of Direct Request Proceeding for each of the Tenants as well as affirmed testimony in the hearing that the Application for Dispute Resolution by Direct Request and the Notice of Direct Request were served on each of the Tenants personally on July 8, 2017, and that a Witness was present for the service of these documents. I note the particulars of the Landlords’ application are explained in the Notice of Direct Request documents. The Landlord also provided affirmed testimony that the Notice of Hearing was served on each of the Tenants by registered mail on July 27, 2017, and provided copies of the registered mail receipts. I find that the Tenants have been duly served.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

This matter dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing in order to ascertain whether a tenancy exists that falls within the jurisdiction of the *Act*. In the hearing the Landlord provided affirmed and undisputed testimony that they own the property where both they and the Tenants

reside, and that they and the Tenants live in units that are completely separate from one another. The Landlord testified that although there are common areas on the premises, these common areas include a garden and a carport, not a kitchen or a bathroom.

The landlord also testified that paragraph 12 of the House Sharing Application and Agreement (the "Agreement"), which states "this is not a tenancy under the Residential Tenancy Act", is incorrect and should say this *is* a tenancy under the *Act*.

Given the evidence before me from the Landlord, and in the absence of any evidence to the contrary, I find that a tenancy exists between the above named Landlord and Tenants to which the *Act* applies and that this tenancy is not excluded from the *Act* under section 4. I further note that under section 5 of the *Act* Landlords and Tenants may not avoid or contract outside of the *Act*. As result, I find that I have the jurisdiction to decide this matter and have proceeded accordingly.

In the hearing the Landlord provided affirmed and undisputed testimony that the Tenants continue to occupy the rental unit and requested to amend their application to include loss of rent for August, 2017. The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find that the circumstances before me comply with section 4.2 of the Rules of Procedure, and pursuant to section 62(3) of the *Act*, that the Landlord's application is amended to include a claim for the loss of August, 2017, rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The Landlord submitted the following relevant evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for each of the Tenants;
- Registered Mail receipts for the service of the Notice of Hearing documents on each Tenants;

- A copy of a House Sharing Application and Agreement which was signed by the Landlord and the Tenants on May 5, 2016, indicating a 1 year fixed term tenancy commencing on June 1, 2016, with a monthly rent of \$2,000.00, due on the first day of each month;
- A Notice of Rent Increase – Residential Rental Units (the “Notice of Rent Increase”) dated January 21, 2017, increasing the rent from \$2,000.00 to \$2,080.00, effective June 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated July 1, 2017, personally served on the Tenants, July 2, 2017, with a stated effective vacancy date of Jan 12, 2017, for \$2,080.00 in unpaid rent;
- A witnessed and signed Proof of Service of the 10 Day Notice (the “Proof of Service”) indicating that the Notice was personally served on the Tenants on July 2, 2017; and
- A Direct Request worksheet indicating that rent in the amount of \$2,080.00 was due on July 1, 2017, and that no payments have been made towards this amount.

In the evidence before me there was some discrepancy regarding how the 10 Day Notice was served on the Tenants as multiple service methods were selected on the Proof of Service. In the hearing the Landlord provided affirmed and undisputed testimony that the Tenants were served with the Notice by attaching a copy to the door of the rental unit, by mailing a copy to the Tenants’ residence by regular mail, and by hand delivering a copy to the Tenants in person, on July 2, 2017. The Landlord testified that they and another party, J.N., were both present when the 10 Day Notice was served in person and that although the Tenants originally refused to sign the confirmation section of the 10 Day Notice, they later returned a signed copy to them.

The Notice states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

The Landlord testified that the Tenants continue to occupy the rental unit, and they have neither paid the rent owing for July, nor any rent for August. There was also no evidence the Tenants filed an application to dispute the Notice.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) 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.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were served with the 10 Day Notice on July 2, 2017, the day it was personally served on them.

I also find that the Tenants were obligated to pay the monthly rent, on time and in full. However, I do not find that the Landlord was entitled to collect rent in the amount of \$2,080.00 due to an error made in the calculation of the allowable rent increase.

The maximum allowable rent increase at the time the Landlord issued the Notice of Rent Increase was 3.7%. As a result, I find the maximum rent increase allowable was \$74.00, not \$80.00. There was no evidence before me regarding the amount of rent the Tenants paid for June of 2017, and the evidence indicates they paid no rent for July or

August. The Residential Tenancy Branch Policy Guideline states under section 37, that if a landlord collects a rent increase that does not comply with the Legislation, the Tenant may deduct the increase from rent. As the amount of the rent increase exceeds the maximum allowable under the *Act* and the *Regulation*, I find that it is of no force or effect and that the Tenants were entitled to deduct this amount from the monthly rent. As this was the only rent increase since the start of the tenancy, I find that the Tenants were only obligated to pay the original monthly rent amount of \$2,000.00 as stated in the Agreement.

As there is no evidence before me to the contrary, I find that the Tenants have failed to pay the rent owed in full as outlined above within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, July 12, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$4,000.00, the amount owing as of today's date for unpaid rent.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,000.00 for rent owed for July, 2017 and August, 2017. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: August 15, 2017

Residential Tenancy Branch