



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

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for unpaid rent or utilities.

An agent for the landlord and the tenant attended the hearing and each gave affirmed testimony. The parties each called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 1, 2017, although the tenant actually moved in earlier, and still occupies the rental unit. Rent in the amount of \$375.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$187.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a subsidized housing complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant did not pay rent in full for November, 2017, having paid only \$187.50. The tenant paid full rent for December on the 19th of the month, and in January, 2018 the tenant paid no rent.

On January 12, 2018 the landlord's agent and the landlord's witness attended the rental unit and posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit, and a copy has been provided for this hearing. It is dated January 12, 2018 and contains an effective date of vacancy of January 25, 2018 for unpaid rent in the amount of \$187.50 that was due on January 1, 2018.

February's rent was also paid late, however the tenant paid the rent by way of electronic transfer on February 18, 2018 in the amount of \$375.00 for which the landlord gave a receipt that specified that the tenancy would not continue and the rent was accepted for occupancy and use only. No rent has been paid for March, 2018, however being unfamiliar with the *Residential Tenancy Act*, the landlord's agent contacted the Residential Tenancy Branch who advised it was fine to collect the rent, but the tenant said he returned March's rent to the Ministry.

The tenant has not served the landlord with an application for dispute resolution disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the landlord seeks an Order of Possession.

The landlord's witness testified that he is a resident attendant for the landlord, but does not reside on the rental property.

Prior to February, 2018 the tenant paid rent in cash once he received a Ministry cheque. In February, 2018 the landlord changed the method of payment of rent for the complex to an electronic funds transfer system. The witness would then receive an advice sheet with name of those tenants who paid electronically and the witness would prepare a receipt and place it in the tenants' mailboxes.

On January 12, 2018 the witness was present when the landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit with tape.

The witness further testified that he completes the ledgers, and the tenant has an overdue amount for rent from November, 2017 in the amount of \$187.50. On December 19, 2017 the tenant made an arrears payment of \$375.00, but did not pay rent on January 1, 2018. The tenant paid \$375.00 by electronic transfer on February 18, 2018, for which the witness issued a receipt stating that the landlord does not want to continue the tenancy, for occupancy and use only. The witness signed the receipt and placed it in the tenant's mail box. An error exists in the math, however the tenant is in arrears of rent \$187.50 for

November, 2017; \$375.00 for January, 2018 and \$375.00 for March, 2018. The tenant did not pay the arrears or dispute the notice to end the tenancy within 5 days.

The tenant testified that the parties had been to arbitration in August, 2017 concerning an application made by the landlord for an Order of Possession and a monetary order. The Arbitrator said that the landlord had accepted rent owed.

The landlord doesn't serve Notices to End Tenancies until up to the 5th day of each month. The tenant agrees that he owes rent for November, 2017, however the landlord wants the tenant to move out for alternate reasons.

The tenant attempted to pay rent for March, 2018 but the landlord wouldn't accept it.

The tenant's witness testified that the landlord's agents do not like the tenant, uttering racial slurs and calling the tenant a drug dealer.

The tenant always comes up with the rent, and the witness assisted the tenant in setting up direct payments from the Ministry to the landlord, but the landlord wouldn't accept rent for March, 2018. Also, on January 12, 2018 the tenant tried to pay \$375.00 cash, but the landlord wouldn't accept it, but accepted February's rent direct from the Ministry.

Analysis

The *Residential Tenancy Act* is clear: once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

Although I accept that the landlord refused rent for March, 2018, and perhaps February, 2018, the tenant didn't offer to pay all of the arrears, and not within 5 days of the issuance of the notice to end the tenancy. I also accept that the tenant paid \$375.00 on February 18, 2018, but that was not within 5 days, and the landlord made it clear that the money was being accepted for use and occupancy of the rental unit only and did not serve to reinstate the tenancy. I also accept that errors were made in the mathematics, but the landlord has not applied for a monetary order.

The tenant does not dispute that rent was not paid in full and has not disputed the notice. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act* and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: March 21, 2018

Residential Tenancy Branch