



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

Tenants: CNR, FFT
Landlord: OPRM-DR, FFL

Introduction

The Tenants have made an application to cancel a 10-Day Notice to End Tenancy for Unpaid Rent. The Landlord had made an application for Direct Request to obtain an Order for Possession and a monetary order, but that application was set down for a hearing date as the Tenants had filed a dispute. Accordingly, this hearing was convened by way of conference call in response to the Application for Dispute Resolution made by the Tenants and the Landlord which were scheduled to be heard together on May 1, 2018.

The Tenant, GM, appeared on behalf of both Tenants; an Advocate, SW, was also present for the hearing on behalf of the Tenants. The Agent and resident caretaker appeared on behalf of the Landlord. SW indicated he was not aware of the cross-claim brought by the Landlord, however, the Landlord provided the registered mail tracking code used to deliver the notice of hearing and evidence to each Tenant, and GM indicated that he was aware of the claim made by the Landlord. I have reviewed the online tracking and GM appears to have accepted delivery of the package on April 16, 2018. I am satisfied that both parties had sufficient notice of the hearing and evidence submitted.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issue(s) to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled, pursuant to section 46 of the *Residential Tenancy Act* (the "Act")? If not, is the Landlord entitled to an Order for Possession, pursuant to section 55 of the Act?

Is the Landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the Act?

Is either party entitled to an Order for payment of their filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began in 1992, although the parties agree that the most current tenancy agreement is dated January of 2003. The parties agree that the terms include monthly payment of rent in the amount of \$1,385.00 and \$60.00 for parking on the 1st of each month.

The Landlord served a 10-Day Notice to End Tenancy dated February 15, 2018 to the Tenant in person, on that same date. The effective date was February 26, 2018, but the Tenants disputed the notice within the five-day deadline and have no immediate plans to move elsewhere. The notice was provided on the grounds that there was unpaid rent of \$5,750.00 owing at that time; this was for the months of November 2017 through February 2018. The Tenants made an additional payment of \$500.00 shortly thereafter, and have continued to pay additional amounts of approximately \$500.00 each month to pay down the arrears. The Tenants provided records of the following payments to the Landlord:

February 19, 2018 - \$507.50

March 2, 2018 - \$2,000.00

April 2, 2018 - \$2,007.50

The Landlord testified that the current amount outstanding is \$4,215.00 less a \$100.00 credit to be applied, as a result of a previous application by the Tenants; the Tenant stated that he agrees with the amount of the arrears, and that a further payment for May will include both current rent owing and additional sums to be applied to the rent arrears.

The parties each contend that the other is in violation of a decision of the Residential Tenancy Branch dated February 1, 2018. In that decision, the Tenants were successful in their application and had a 10-Day Notice to End Tenancy for Unpaid Rent cancelled and costs of \$100.00 awarded for the filing fee, to be applied as a credit against rent payments. The Arbitrator found that the Landlord had wrongfully refused payment of the Tenants' rent over several previous months.

In his analysis, the Arbitrator concluded that:

"I further note that as the landlord refused to accept the rent payment for December of 2017, January and February, 2018 that while rent for those months should be paid forthwith by the tenant, the landlord is estopped from issuing a Notice to End Tenancy for Late Rent for those months or including those months in a calculation of Repeated Late Payment of Rent."

The Landlord argues that "forthwith" means that payment for the back rent was due immediately upon receipt of the written decision; and that there was no agreement or order that payments were to be made over time to catch up the rent arrears. The Tenant, GM, provided a statement

which states in part, *"It is my position that I have kept my obligations and respected the ruling of the adjudicator in regards to the Feb 1st 2018 hearing and its directions. I will continue to pay the balance of my back rent until it is brought to zero in addition to my current rent, however, I do not see that I am to be penalized by having to come up with the lump sum amount owing when it was the VML and MR Harvie that for whatever reason refused to take my rent repeatedly."*

The Tenant argued that had the Arbitrator intended for payment to be made immediately, he would have so ordered it. The Tenant states that although rent is in arrears, he is making every effort to pay this off while maintaining the current rent payments. He stated that he had emergency medical expenses for his family and litigation expenses, and that the money which was available for rent earlier is no longer available; he argues that he is not in a position to pay off the entire amount in one lump sum, but that he is in compliance with the decision dated February 1, 2018 nonetheless. An attempt was made to mediate the dispute with a proposed payment plan to pay the rent arrears, but the Landlord was not inclined to proceed with settlement discussions, so the hearing resumed.

With respect to the Notice to End Tenancy, the Landlord argues that the February 1st decision only estopped him from evicting the tenant for late rent under a One-Month Notice for Cause; he states that this is a 10-Day Notice to end the tenancy for unpaid rent and that it is not in violation of the previous decision. The Tenants' Advocate argued that the intention of the notice is to evict the Tenants for non-payment of rent up to and including February of 2018, which the Landlord was specifically estopped from doing; he stated that the notice should not be considered valid based on a technical argument that it is for unpaid rent versus late rent.

Analysis

The Landlord wants to end the tenancy, but cites the same grounds as in a previous application, where the Arbitrator stated the Landlord is estopped from filing a further notice to evict for the late rent with respect to those particular months. The Landlord's argument that this eviction notice is valid because it is for unpaid rent does not support the intention of the decision rendered February 1, 2018. The Landlord is attempting to end a long-term tenancy using the same unpaid rent for the same months which was argued in that hearing.

The decision of that Arbitrator is final and binding and I am not in a position to re-open the evidence or reconsider those issues, as they are *res judicata*. *Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

I find that the Landlord was not entitled to issue a notice for the unpaid rent for the months in question and therefore the 10-Day Notice is cancelled and of no force or effect. The tenancy shall continue until proper notice is provided under the legislation by either party, and in compliance with all decisions of the Residential Tenancy Branch. The Tenants' Application to

cancel the 10-Day Notice is allowed and the Landlord's Application for an Order for Possession is dismissed, without leave to re-apply.

As for the request for a monetary order for payment of the rent arrears, there is no evidence to suggest that there was any arrangement made during the previous hearing for payment of the rent over a period of time; in fact, the Arbitrator clearly stated that the Tenants were to pay rent arrears "forthwith", suggesting that the payment should have been made upon receipt of the decision. A formal order for payment of rent was not issued at that time because no application for a monetary order was before that Arbitrator.

The Landlord has now filed an application requesting a monetary order to ensure payment of the rent arrears. Although the tenancy continued and there is evidence that the Tenants have been making regular monthly payments which cover the rent plus a portion of the back-rent owing, the Landlord is entitled to receive the full amount of the arrears as was indicated in the previous decision of February 1, 2018. I do not agree that the Tenants are being "penalized" by having to pay their rent up several months after it was due and owing, as they have had the advantage of continuing to reside in the rental premises throughout the duration of this dispute.

Section 67 of the Act states *"Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party."*

In accordance with section 67, I hereby find that the Tenants are in arrears for rent and that the Landlord is entitled to a monetary award calculated as follows:

Rent Arrears (Nov 2017 – Feb 2018)	\$4,215.00
LESS: <u>\$100 credit</u> for filing fee awarded	
BALANCE OWING:	\$4,115.00

Finally, I note that both parties failed to comply with the Arbitrator's decision: the Tenants failed to pay the rent owing forthwith and the Landlord filed an eviction notice when estopped from doing so. As both parties were only partially successful in their current applications, I am not inclined to make an award for the filing fees incurred. The Tenants are reminded to uphold their ongoing rent payments in addition to this monetary order, to avoid any future action on the part of the Landlord to evict for unpaid rent with respect to future months; documenting the payments and how they are to be applied would be prudent.

This monetary order is attached to the Landlord's copy of this decision. It must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court as an order of that court, if the Tenants fail to make payment.

Conclusion

The Tenants' Application to cancel the 10-Day Notice to End Tenancy dated February 15, 2018 is hereby allowed. The Landlord's Application for an Order for Possession is dismissed without leave to re-apply.

The Landlord's Application for a monetary award in the sum of \$4,115.00 for rent arrears is hereby granted. 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: May 2, 2018

Residential Tenancy Branch