



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CROSSCON RESOURCES (CANADA) CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 6, 2018 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 19, 2018 (the “10 Day Notice”). The Landlord also sought a Monetary Order for unpaid rent.

The Application relates to a motel. The Motel Manager (the “Manager”) attended the hearing on behalf of the Landlord. Nobody appeared for the Tenants. However, around 9:49 a.m., the teleconference system announced Tenant J.C. I asked if Tenant J.C. had joined the conference but received no reply. The teleconference system then announced Tenant J.C. exiting the conference. Neither Tenant called into the conference after this.

The hearing process was explained to the Manager who did not have relevant questions when asked. The Manager provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord’s evidence. The Manager said she served the hearing packages on the Tenants in person March 24, 2018. She said she handed two packages to Tenant J.C. and told him one was for Tenant D.C. She said she told Tenant J.C. the packages related to the dispute hearing. She said Tenant D.C. was in the room at the time and indicated she was aware one of the packages was for her.

Based on the undisputed testimony of the Manager, I find the Tenants were served with the hearing packages in accordance with section 89(1)(a) of the *Act*. I also find the hearing packages were served in sufficient time to allow the Tenants to prepare for and appear at the hearing. This finding is supported by Tenant J.C. calling into the

conference around 9:49 a.m. I find Tenant J.C. must have known the date and time of the hearing as well as the code required to call in to the conference. This information would have been provided in the hearing package.

The Manager said she did not serve the Landlord's evidence on the Tenants. The Landlord's evidence consisted of the following: a receipt signed by Tenant D.C. for November to December rent; a receipt signed by Tenant J.C. for January to February rent; the 10 Day Notice; a copy of the 10 Day Notice signed by the Tenants; and a Direct Request Worksheet. The Manager said both Tenants had seen the rent receipts as they paid together.

Rule 3.14 of the Rules of Procedure (the "Rules") requires an applicant to serve their evidence on the respondent at least 14 days before the hearing. Rule 3.17 allows me to admit evidence when an applicant has not complied with rule 3.14 if doing so "does not unreasonably prejudice one party or result in a breach of the principles of natural justice". I admit all evidence, other than the Direct Request Worksheet, as I find the Tenants would have been aware of this evidence despite not being served with it as evidence in this hearing. I exclude the Direct Request Worksheet as the Tenants would not have been aware of this.

I was satisfied with service and proceeded with the hearing in the absence of the Tenants. The Tenants had not submitted evidence prior to the hearing. The Manager was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence of the Landlord and the oral testimony of the Manager. I will only refer to the evidence I find relevant in this decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Manager said the Tenants rent a motel room that is like a two-bedroom suite with its own kitchen and bathroom. She said there is an oral tenancy agreement between the Landlord and Tenants regarding the motel room. She said the Tenants originally booked a different room with the intention of staying one or two nights but then moved into the rental unit on December 2, 2017. She said the agreement that the Tenants

would move into the rental unit was made November 28, 2017 and this is the date the Tenants paid for the unit. She said the agreement was that the tenancy would be month-to-month during the winter. She said she told the Tenants rent would increase for the summer months. She said the Tenants said they would see how long they would stay. She said the rental unit is not used by the Tenants for vacation or travel but as their residence.

The Manager said rent is \$900.00 plus tax for a total of \$1,035.00 monthly. She said the Tenants agreed to pay \$1,035.00 for each month they stayed in the rental unit. She said rent is due on the first day of each month and the Tenants agreed to pay rent for February 2 to March 2, 2018 on February 1, 2018. She said the Landlord sometimes requires a security deposit but did not require one from the Tenants because they said they did not have the money for one when asked. She said there is no pet damage deposit.

The rent receipts show the Tenants paid \$1,035.00 for November 28, 2017 to December 28, 2017. The Manager said this period changed to December 2, 2017 to January 2, 2018 because the Tenants did not move into the rental unit until December 2, 2017. The rent receipts show the Tenants paid \$1,035.00 for January 2, 2018 to February 2, 2018.

The Manager said she served both pages of the 10 Day Notice on the Tenants personally on February 19, 2018. She said both Tenants signed the 10 Day Notice and she submitted a signed copy as evidence.

The Manager said the Tenants owed outstanding rent of \$1,035.00 as of February 2, 2018 which is reflected in the 10 Day Notice. She said the Tenants never paid the outstanding rent. She said the Tenants did not have authority under the Act to withhold rent. She said the Tenants never disputed the 10 Day Notice.

The Manager said, as of the date of the hearing, the Tenants owe further outstanding rent. She said she is only requesting rent up to May 2, 2018 which is \$3,105.00. She asked to amend the Application to include this further amount.

Analysis

Policy Guideline 27 deals with jurisdiction of the Residential Tenancy Branch (the “Branch”) to decide matters. In relation to hotel tenants, the policy guideline states at page three:

Occupancy of a hotel is a license and if occupied pursuant to a tenancy agreement, the *Residential Tenancy Act* assumes jurisdiction and confers power upon the Residential Tenancy Branch over certain hotels and hotel tenants. The Residential Tenancy Branch will therefore hear the dispute if the tenant is a hotel tenant under a tenancy agreement.

Based on the undisputed testimony of the Manager, I find the Landlord and Tenants entered into an oral tenancy agreement in relation to the motel room. Pursuant to Policy Guideline 27, I find the Branch has jurisdiction over this matter.

I accept the undisputed testimony of the Manager that the motel room is not occupied by the Tenants as vacation or travel accommodation but as their residence; therefore, section 4 of the *Act* does not preclude jurisdiction in these circumstances.

I would caution the Landlord that they are not permitted to charge taxes on rent under a tenancy agreement. Further, they are not permitted to increase rent during summer months for those occupants that are tenants under a tenancy agreement except in accordance with the *Act*. The Landlord should refer to Part 3 of the *Act* for allowable rent increases under the *Act*.

I accept the undisputed testimony of the Manager that the Tenants agreed to pay \$1,035.00 on the first of each month for each month they stayed in the rental unit. Therefore, I find the Tenants were obligated to pay the Landlord \$1,035.00 for February to March on February 1, 2018. I accept the undisputed testimony of the Landlord that the Tenants failed to pay rent on February 1, 2018.

Section 26(1) of the *Act* states that a “tenant must pay rent when it is due under the tenancy agreement...unless the tenant has a right under this Act to deduct all or a portion of the rent”.

I accept the undisputed testimony of the Manager that the Tenants did not have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where tenants have failed to pay rent. The relevant portions of section 46 state:

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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

...

Section 52 of the *Act* sets out the requirements of a notice to end tenancy and states:

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,

(d) ...state the grounds for ending the tenancy,

...

(e) when given by a landlord, be in the approved form.

I accept the undisputed testimony of the Manager that she served the 10 Day Notice on the Tenants personally on February 19, 2018. This is supported by the copy of the 10 Day Notice with the Tenants' signatures acknowledging receipt submitted as evidence. Based on this, I find the 10 Day Notice was served on the Tenants in accordance with section 88(a) of the *Act*.

I have reviewed the 10 Day Notice and find it does comply with section 52 of the *Act* as set out above.

The Tenants had five days from receipt of the 10 Day Notice to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Manager that the Tenants did not pay the outstanding rent or dispute the 10 Day Notice. Therefore, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended on March 1, 2018, the corrected effective date of the 10 Day Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by March 1, 2018. I find the Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlord an Order of Possession effective two days after service on the Tenants.

In relation to the request for a Monetary Order, rule 4.2 of the Rules allows me to amend an application for dispute resolution 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 accept the undisputed testimony of the Manager that the Tenants owed further outstanding rent at the time of the hearing. I find this is the very circumstance contemplated by rule 4.2 and I amend the Application to request the outstanding rent from February 2 to May 2, 2018 as requested by the Manager.

Section 7(1) of the *Act* states that a tenant who does not comply with the *Act* or tenancy agreement must compensate the landlord for loss that results. I have accepted the undisputed testimony of the Manager that the Tenants have not paid rent from February 2 to May 2, 2018. Therefore, I find the Tenants have breached the tenancy agreement and section 26(1) of the *Act*. I find the Tenants must compensate the Landlord for the resulting loss which, in this case, is the loss of rent for February 2 to May 2, 2018. I find the Landlord is entitled to a Monetary Order. Given the Landlord is not permitted to charge tax on rent, I only award the Landlord \$900.00 for each month of outstanding

rent. Therefore, pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,700.00.

As the Landlord was successful in this application, I grant the Landlord a further \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is also entitled to a Monetary Order in the amount of \$2,800.00 pursuant to section 67 and 72(1) of the *Act*. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 1, 2018

Residential Tenancy Branch