



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOE VILLA INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for more time to cancel a Notice to End Tenancy; for an Order requiring the Landlord to comply with the tenancy agreement or the *Residential Tenancy Act* (Act); for an Order restricting or setting conditions on the Landlord's right to enter the rental unit; and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Tenant stated that he did not intend to apply for more time to cancel a Notice to End Tenancy. He stated that he understood he was applying for more time to remain in the rental unit. I therefore find it reasonable to disregard the Tenant's application for more time to cancel a Notice to End Tenancy.

The Tenant stated that on August 10, 2018 the Application for Dispute Resolution and the Notice of Hearing were delivered to Legal Counsel for the Landlord's business office.

Legal Counsel for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were not delivered to his business office. He stated that he obtained the information needed to join this teleconference directly from the Residential Tenancy Branch, which he contacted after receiving related documents from the Tenant.

The issues identified in the Application for Dispute Resolution will not be considered at these proceedings for reasons detailed in the preliminary matter section of this decision. As the issues identified in the Application for Dispute Resolution will not be considered at these proceedings, I am satisfied that it would not disadvantage the Landlord to proceed with the hearing even though the Landlord did not acknowledge receipt of the Application for Dispute Resolution.

On August 10, 2018 the Tenant submitted an Amendment to an Application for Dispute Resolution in which he applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent which declared that the Tenant must vacate the rental unit by August 18, 2018. The Tenant stated that on August 10, 2018 this Amendment to an Application for Dispute Resolution, the

associated Ten Day Notice to End Tenancy for Unpaid Rent, and copies of 4 cheques were delivered to Legal Counsel for the Landlord's business office. Legal Counsel for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On August 13, 2018 the Tenant submitted an Amendment to an Application for Dispute Resolution in which he applied to cancel a Two Month Notice to End Tenancy, dated August 07, 2018. The Tenant stated that on August 13, 2018 this Amendment to an Application for Dispute Resolution and the associated Two Month Notice to End were delivered to Legal Counsel for the Landlord's business office.

Legal Counsel for the Landlord acknowledged receiving this Amendment to an Application for Dispute Resolution. He stated that he did not receive the associated Two Month Notice to End for Unpaid Rent, although he has one in his possession. As the Landlord has a copy of the Two Month Notice to End Tenancy, I am satisfied that I can refer to it during these proceedings even though I cannot conclude that it was served to the Landlord in accordance with the Residential Tenancy Branch Rules of Procedure.

On September 07, 2018 the Tenant submitted an Amendment to an Application for Dispute Resolution in which he applied to cancel a Ten Day Notice to End Tenancy, dated September 02, 2018. The Tenant stated that on September 07, 2018 this Amendment to an Application for Dispute Resolution and the associated Ten Day Notice to End Tenancy were sent to the Agent for the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

Legal Counsel for the Landlord declined the opportunity for an adjournment and indicated that the Landlord was prepared to respond to the Tenant's applications to set aside the aforementioned three Notices to End Tenancy.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues to be determined, which are not sufficiently related to be determined during these proceedings.

I find that the most urgent issues before me are the Tenant's application to cancel three Notices to End Tenancy and I will, therefore, only consider those issues. The Tenant's application for

an Order restricting or setting conditions on the Landlord's right to enter the rental unit is dismissed, with leave to reapply.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent, dated September 02, 2018, be set aside?

Should the Two Month Notice to End Tenancy, dated August 07, 2018, be set aside?

Should the Ten Day Notice to End Tenancy for Unpaid Rent, which declares that the Tenant must vacate the rental unit by August 18, 2018, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2016; that they subsequently entered into a fixed term tenancy agreement, the fixed term of which ended on June 30, 2018; and that the Tenant agreed to pay rent of \$2,200.00 by the first day of each month.

The Tenant stated that the Landlord and the Tenant verbally agreed to extend the term of the tenancy to October 31, 2018. The Landlord stated that she did not agree to extend the tenancy to October 31, 2018.

The Tenant stated that he is still residing in the rental unit. The Agent for the Landlord stated that a lot of the furniture has been removed from the rental unit and she thinks it has been abandoned.

Legal Counsel for the Landlord and the Tenant agree that the Tenant was served with a Ten Day Notice to End Tenancy, dated September 02, 2018, which declared that the Tenant must vacate the rental unit by September 12, 2018. The parties agree that this Notice declared that rent of \$5,600.00 is due.

Legal Counsel for the Landlord and the Tenant agree that the Tenant was served with a Ten Day Notice to End Tenancy which declared that the rental unit must be vacated by August 18, 2018. The parties agree that this Notice declared that rent of \$3,400.00 is due.

Legal Counsel for the Landlord stated that the Tenant paid \$1,000.00 in cash for rent for July of 2018, leaving \$1,200.00 in rent due for July of 2018.

Legal Counsel for the Landlord stated that the Tenant did not pay any rent for July of 2018, leaving \$3,400.00 in rent due for August of 2018.

Legal Counsel for the Landlord stated that the Tenant did not pay any rent for September of 2018, leaving \$5,600.00 in rent due for August of 2018.

The Tenant stated that he paid \$1,000.00 in cash for rent for July of 2018. He stated that on July 06, 2018 he sent the Agent for the Landlord a cheque, in the amount of \$1,200.00, for rent for July of 2018.

The Tenant stated that on July 06, 2018 he also sent the Agent for the Landlord a cheque, in the amount of \$2,200.00, for rent for August of 2018.

The Tenant stated that on July 06, 2018 he also sent the Agent for the Landlord a cheque, in the amount of \$2,200.00, for rent for September of 2018.

The Tenant submitted copies of the rent cheques he allegedly sent to the Agent for the Landlord.

The Agent for the Landlord stated that she did not receive any of the aforementioned cheques from the Landlord.

The Tenant stated that he sent several text messages to the Agent for the Landlord in July of 2018, in which he asked her if she received the cheques he had mailed. He stated that the Agent for the Landlord did not respond to any of those text messages. The Agent for the Landlord stated that she did not receive any text messages from the Tenant in which he asked her if she received rent cheques for July, August, or September of 2018. The Tenant did not submit copies of these text messages.

The Tenant stated that on August 10, 2018 he sent an email to the Agent for the Landlord, in which he asked her if she received the cheques he had mailed. He stated that the Agent for the Landlord did not respond to this email. The Agent for the Landlord stated that she did not receive any email from the Tenant in which he asked her if she received rent cheques for July, August, or September of 2018. The Tenant did not submit copies of this email.

Legal Counsel for the Landlord argued that it is difficult for the Landlord to prove that she did not receive cheques from the Tenant.

Both parties provided additional evidence regarding the Two Month Notice to End Tenancy, dated August 07, 2018, and the Ten Day Notice to End Tenancy for Unpaid Rent, which declares that the Tenant must vacate the rental unit by August 18, 2018. That information is not recorded in this decision as I subsequently determined that I did not need to determine the merits of those Notices.

Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a tenancy agreement, for which the Tenant agreed to pay rent of \$2,200.00 by the first day of each month.

I favour the testimony of the Tenant, who stated that he is still living in the rental unit, over the testimony of the Agent for the Landlord, who stated that she thinks the rental unit has been abandoned. As the Landlord submitted no evidence to corroborate the Agent for the Landlord's belief that the rental unit has been abandoned, I find that the Tenant is the most reliable source in regards to his place of residence.

Regardless of whether the Landlord agreed to extend the tenancy past June 30, 2018, I find that the Tenant must pay rent, in full, for July, August, and September of 2018, as he is still occupying the rental unit.

On the basis of the undisputed evidence I find that the Tenant paid \$1,000.00 in rent for July of 2018.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant mailed cheques to the Agent for the Landlord for the remaining rent for July of 2018; for rent for August of 2018; and for rent for September of 2018.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Agent for the Landlord did not receive the Tenant's cheques for the remaining rent for July of 2018; for rent for August of 2018; and for rent for September of 2018.

I find it entirely possible that both parties are telling the truth. I find it possible that the Tenant mailed the cheques, as he contends, and that the cheques were lost or incorrectly delivered by Canada Post.

I find that it would have been reasonable for the Tenant to conclude that the Landlord did not receive his cheques for the remaining rent for July of 2018; for rent for August of 2018; and for rent for September of 2018 after he was served with the Ten Day Notice to End Tenancy for Unpaid Rent that declared he must vacate the unit by August 18, 2018. I find that it would have been even more reasonable for the Tenant to conclude that the Landlord did not receive those rent cheques after he was served with the Ten Day Notice to End Tenancy for Unpaid Rent that is dated September 02, 2018.

It is a tenant's responsibility to pay rent when it is due. In the event a landlord does not receive a rent payment, particularly one that is sent by mail, it is the tenant's responsibility to ensure that payment is provided. It is not sufficient to conclude that the payment was received simply because it was mailed.

In circumstances such as these, where the Landlord has never confirmed receipt of cheques sent in the mail and the Landlord has served two Ten Day Notices to End Tenancy for Unpaid Rent, I find that the Tenant had an obligation to replace the missing cheques or to pay the rent in another format. In the event the Tenant was concerned that the Landlord had received the aforementioned rent cheques and would cash them at a later date, I find that the reasonable course of action would have been to place a "stop payment" on the cheques and then make alternate arrangements to pay the rent.

Section 46(1) of the *Act* stipulates that 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 ten days after the date the tenant receives the notice.

As the Tenant did not make alternate arrangements to pay the rent after it was reasonable for him to conclude that the Landlord did not receive his cheques for the remaining rent for July of 2018; for rent for August of 2018; and for rent for September of 2018 and the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent, dated September 02, 2018, I find that the Landlord had grounds to end the tenancy pursuant to section 46(1) of the *Act*. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent, dated September 02, 2018.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent, dated September 02, 2018, has been dismissed and that Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

As I have concluded that the tenancy should end on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, dated September 02, 2018, I find it is not necessary for me to determine the merits of the Two Month Notice to End Tenancy, dated August 07, 2018, or the Ten Day Notice to End Tenancy for Unpaid Rent, which declares that the Tenant must vacate the rental unit by August 18, 2018.

As the Landlord has established grounds to end this tenancy, I find that the Tenant is not entitled to compensation for the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenant**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: September 28, 2018

Residential Tenancy Branch