



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 CNR, FF

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 16, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 6, 2018 (the "10 Day Notice");
- Recovery of the filing fee.

The Tenant, her representative G.M. as well as the Tenant's witness B.N. attended for the Applicant. Appearing on behalf of the Landlord was representatives M.M. and R.H., as well as the Landlord's resident caretaker J.M. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenant, G.M. advised that the Landlord was served with the Application package and documentary evidence in person on November 6, 2018. M.M. acknowledged receipt of the package on behalf of the Landlord. The Tenant also made an amendment to the Application on December 11, 2018 to include another 10 Day Notice dated December 6, 2018. The amendment to the Application package was also confirmed as being received by M.M.

M.M. testified that he served the Tenant the Landlord's documentary evidence via email. G.M. confirms having received the documentary evidence however, brought up the issue of service via email. Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

G.M. confirmed having received the Landlord's documentary evidence. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated November 6, 2018, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order cancelling the 10 Day Notice dated December 6, 2018, pursuant to Section 46 of the *Act*?
3. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
4. Is the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on November 1, 2009. Rent in the amount of \$1,125.00 is due to be paid to the Landlord by the first day of each month. A security deposit in the amount of \$500 was paid to the Landlord.

The November 10 Day Notice;

On behalf of the Landlord, M.M testified that the Tenant failed to pay rent in the amount of \$1,125.00 for the month of November 2018.

M.M stated that the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 6, 2018 ("the 10 Day Notice") with an effective vacancy date of November 22, 2018, by Registered Mail. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,125.00 which was due on November 1, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

Representing the Tenant, G.M. testified that he also occupies a rental unit in the same building as the Tenant. G.M. states that he paid both his rent as well as the Tenant's rent with a Scotia Bank certified bank draft on November 1, 2018 in the amount of \$2,585.00 along with \$100.00 cash in an envelope. G.M states that the total payment of \$2,685.00 was meant to cover both his and the Tenant's portion of their respective rents and \$100.00 of a previous rental arrear. The Tenant submitted a copy of the bank draft into evidence, which was address to the Landlord.

G.M. further testified that he has paid the rent for both himself and the Tenant for the past four years. G.M states that he has paid both rents via one certified bank draft since July 2018.

Resident Caretaker J.M. confirms having received the above mentioned payment from G.M. on November 1, 2018. J.M. states that the certified bank draft received from G.M on November 1, 2018 was unmarked and no indication as to what the \$100.00 cash was for. This was unlike the previous payments which all clearly indicated that the payment was rent for both suites.

Furthermore, M.M testified that G.M. is currently bound by a monetary order in the amount of \$4,115.00. M.M states that the unmarked payment made by G.M. on November 1, 2018 was fully applied to the remaining balance of the outstanding money owed to the Landlord.

G.M. confirms that he is bound by a monetary order to repay the Landlord. He stated that he and the Landlord have a verbal agreement that G.M. repay back the money owed when possible. G.M. stated that the payment made to the Landlord on November 1, 2018 was meant to cover the both rents rather than repaying the monetary order.

M.M testified that the monetary order states that the amount of \$4,115.00 is owed forthwith and that it was reasonable for the Landlord to apply the unmarked payment toward the outstanding money owed to the Landlord.

G.M testified that he has paid \$3,000.00 towards the monetary order prior to November 1, 2018. The Landlord submitted documentary evidence indicating there is a balance of \$1,430 owing towards the monetary order. M.M. testified that G.M. had been served with the monetary order, but made no mention as to if the Landlord was pursuing enforcement through Small Claims Court.

The December 10 Day Notice;

On behalf of the Landlord, J.M. testified that the Tenant failed to pay rent in the amount of \$1,125.00 for the month of December 2018.

J.M. stated that the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2018 ("the 10 Day Notice") with an effective vacancy date of December 19, 2018, by posting it on the Tenant`s door. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,125.00 which was due on December 1, 2018. The Notice informed the Tenant that

the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

G.M. testified that on December 1, 2018 he obtained a certified bank draft from Scotia Bank in the amount of \$2,625.00 to include both the Tenant's rent as well as his own. The certified bank draft was addressed to the Landlord. A copy of the draft was submitted into evidence by the Tenant.

G.M. stated that on December 1, 2018 he was in the company of B.N., another resident in the building, who witnessed him pay rent by putting the certified bank draft in an envelope before placing it through the mail slot of the Superintendent's office, typically occupied by J.M.

The Tenant made B.N. available at the hearing, who provided affirmed testimony, confirming the testimony provided by G.M. surrounding the payment of rent for December 2018.

In response, J.M. confirmed that it is standard practice that tenants pay their rent by placing it through the mail slot of her office if she is absent at the time of payment. On December 1, 2018, J.M. stated that she retrieved a Scotia Bank envelope, however after opening it, noticed the envelope was empty. In the absence of payment, J.M. served the December 6, 2018 10 Day Notice.

G.M. testified that on December 23, 2018 he checked his mailbox and found the certified bank draft containing both rent payments for December 2018 placed in a flyer.

Analysis

Section 46 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

In relation to the 10 Day Notice dated November 6, 2018, G.M. acknowledged receipt. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

I find that G.M. has established a consistent pattern of paying the Tenant's rent as well as his own with one certified bank draft. I find it is unreasonable for the Landlord to apply an unmarked payment made by G.M. completely towards the balance owing on the monetary order, rather than the intended payment of rent. At the very least, the Tenant is entitled to a discussion surrounding the purpose of the payment should there be a discrepancy or uncertainty.

Furthermore, unpaid monetary orders may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims) unless the parties have made arrangements for an ongoing payment plan. If the parties have made such arrangements, they should also put the arrangements in writing so both parties can rely on the written document should any payment problems arise. Furthermore, both parties should keep their own records of payments made in relation to the arrangements and order.

Based on the above, I find the Tenant paid rent for the month for the month of November on the date that it was due. As such, I find, pursuant to Section 46 of the *Act* that the landlord did not have reason to issue a 10 Day Notice to End Tenancy for Unpaid Rent. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 6, 2018 is set aside.

In relation to the 10 Day Notice dated December 6, 2018, G.M. acknowledged receipt of the notice, therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

I find that G.M. obtained a certified bank draft dated December 1, 2018, addressed to the Landlord in the exact amount of both rents, and placed it through the mail slot of the

superintendent's office, which was witnessed by B.N. I find on a balance of probabilities that rent for December 2018 was paid to the Landlord on December 1, 2018.

I find it difficult to believe that G.M. would pay the fee to obtain a Scotia Bank certified bank draft, addressed to the Landlord dated December 1, 2018 for an amount equal to both rents, and not put it in the envelope delivered to the superintendent's office, as there is no benefit in holding it back.

Based on the above, I find the Tenant paid rent for the month for the month of November on the date that it was due. As such, I find, pursuant to Section 46 of the Act that the landlord did not have reason to issue a 10 Day Notice to End Tenancy for Unpaid Rent. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2018 is set aside.

Conclusion

Based on the above I order:

- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 6, 2018 is cancelled.
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2018 is cancelled.
- The tenancy will continue until ended in accordance with the Act.

As the Tenant has been successful, I find she is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment at the Tenant's discretion.

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: January 11, 2019

Residential Tenancy Branch