



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY STREET PROPERTY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, OLC, FFT, OPR, MNRL

Introduction

This hearing dealt with cross applications filed by the parties. On January 7, 2019, E.R. applied for a Dispute Resolution proceeding, on behalf of the Tenant, seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking to set conditions on the Landlord’s right to enter the rental unit pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On January 10, 2019, E.R. amended the Application seeking to cancel a second 10 Day Notice to End Tenancy for Unpaid Rent (the “*Notice*”) pursuant to Section 46 of the *Act*.

On January 15, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act* and seeking a Monetary Order for Unpaid Rent pursuant to Section 67 of the *Act*.

E.R. attended the hearing as an agent acting on behalf of the Tenant. T.J. attended the hearing as an agent for the Landlord, and D.G. attended as counsel for the Landlord. All in attendance provided a solemn affirmation.

As per two previous hearings and based on the testimony of the parties, E.R. was not a tenant of the rental unit but an occupant, and he was simply representing the Tenant in this case. As such, the style of cause of this decision has been amended to reflect the actual Tenant that this dispute pertains to.

E.R. advised that he served D.G. the Notice of Hearing by hand on January 10, 2019 and D.G. confirmed that he received this package. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served this package.

D.G. advised that E.R. was served with the Notice of Hearing package and evidence by hand on January 17, 2019 and E.R. confirmed that he received this package. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served this package. In addition, as service of the Landlord's evidence complied with the time frame requirements of Rule 3.14 of the Rules of Procedure, I have accepted the Landlord's evidence and have considered it when rendering this decision.

E.R. advised that he served D.G. his evidence by hand on February 1, 2019 and D.G. confirmed that he received this package. While service of the Tenant's evidence did not comply with the time frame requirements of Rule 3.14 of the Rules of Procedure, D.G. stated that he takes no issue with respect to service of the Tenant's evidence. As such, I have accepted the Tenant's evidence and have considered it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord's Notice, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that, in addition to considering the Landlord's application, Section 55 of the *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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to an Order of Possession for the unpaid rent?
- Is the Landlord entitled to a Monetary Order for the unpaid rent?

Background and Evidence

Both parties agreed that the tenancy started on December 1, 2015. Rent was established at \$1,150.00 per month and was due on the first of each month. A security deposit of \$575.00 was paid.

The Landlord advised that the Tenant did not pay rent from August 2018 to January 2019. He stated that they served the Notice to the Tenant by posting it to the Tenant's door on January 7, 2019. The Notice indicated that \$6,900.00 was outstanding on January 1, 2019. As well, the Notice indicated that the effective end date of the Notice was January 21, 2019.

E.R. initially filed the Application for Dispute Resolution on January 7, 2019 based on a 10 Day Notice to End Tenancy for Unpaid Rent that was served to the Tenant on December 31, 2018. However, he amended this Application to dispute the Notice to End Tenancy issued on January 7, 2019 and included in the details of dispute that the Landlord advised him that the notice of December 31, 2018 was a "draft for discussion purposes and not intended to be served." Consequently, I am satisfied that the pertinent notice in this dispute is the Notice of January 7, 2019.

The Landlord stated that there were two previous hearings with the Residential Tenancy Branch where the Landlord was awarded an Order of Possession and a Monetary Order for unpaid rent; however, E.R. applied for Judicial Review of those decisions and commenced a Small Claims action against the property management company ("AWM") seeking a return of rent payments on the basis of his Authority Arguments.

The Justice in the Judicial Review decision of June 28, 2017 did not weigh the merits or correctness of the Residential Tenancy Branch decisions and set aside the Orders that were granted. As well, it was ordered that the Tenant pay rent to AWM; however, as of August 2018, the Tenant has not complied with this order to pay the rent.

The Landlord appealed the Justice's decision as the Justice failed to conduct any inquiry into the correctness of the Residential Tenancy Branch decisions and reinstated the tenancy "by granting relief from forfeiture, which is equitable relief outside of the jurisdiction of the court on a judicial review of a RTB decision."

Counsel advised that E.R. also sought an order, based on his Authority Arguments, depriving the Landlord of rent retroactively for the past three years. The Landlord filed a motion in the Court of Appeal against the Justice's decision and it was determined as per paragraph 30 of the Appeal decision, dated February 1, 2019, that "It is clear that the judge's order cannot stand. The judge misapprehended the nature of the application in front of him." Furthermore, it was confirmed in paragraph 39 that:

"a basic problem in this matter is that there is an unnecessary and unfortunate failure on the part of the respondent to accept that the management company is entitled to collect rent on behalf of the landlord. [E.R.] must abandon his stubborn refusal to recognize AWM as the lawful representative of the landlord. His arguments to the effect that he needs further evidence of AWM's authority border on obtuse."

E.R. requested a summons under Sections 64 and 76 of the *Act* for the principal of the rental unit "to participate and provide transactional evidence in these proceedings". Otherwise, the Residential Tenancy Branch does not have the jurisdiction to hear this matter pursuant to Section 58 of the *Act*. Furthermore, it is E.R.'s position that a part of this dispute pertains to and must be pursued under the *Bills of Exchange Act*.

He advised that the Landlord will not provide proof of receipt of funds as per a Supreme Court Order and there is ambiguity over whether the Landlord is the owner, proprietor, or landlord. As such, E.R. requests a summons to have the "registered" principal appear to endorse the advocate or agent and have them submit past banking transactions. If this summons request is denied, then the issue should be addressed through a higher Court as per Section 58 of the *Act* and Policy Guideline # 27 pertaining to jurisdiction.

He referenced the concept of "attributability", he cited the Bill of Costs that he submitted as documentary evidence and explained that the matter of the rent is subject to "billables and receivables", and that the rent has been withheld as of August 1, 2018 as "a form of disbursement" pursuant to his interpretation of the *Bills of Exchange Act* and his legal filings. He advised that he had made a request to have the rent paid through the Court as opposed to directly to the Landlord.

During the hearing, E.R. was asked to clarify and explain his position, and it appeared as if it was his belief that his costs of representing the Tenant are tied to the rent. As such, he is seeking reimbursement for the time he chose to spend representing his mother.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to E.R.'s request for a summons, this request has been denied as it had already been determined by the Supreme Court decision that "The Petitioner's mother's cheques are to be payable to whoever is directed to be payable to by AWM Alliance Real Estate Group LTD." Furthermore, rent had been paid accordingly, by the Tenant, up until August 2018. As such, I am not satisfied that a summons was necessary as this issue of where rent was to be paid had already been settled.

With respect to the ongoing unpaid rent, I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Notice was posted on the Tenant's door on January 7, 2019 and E.R. confirmed that he received this on January 8, 2019. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states 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.”

As the fifth day fell on Sunday January 13, 2019, the Tenant must have paid the rent in full by this date at the latest or made this Application on Monday January 14, 2019. The undisputed evidence is that E.R. made this Application on behalf of the Tenant on January 10, 2019.

While it is E.R.’s belief that the Tenant was entitled to withhold the rent, the Court of Appeal decision in paragraph 42 clearly outlined that the Tenant’s “rent cheques are to be made payable as directed by AWM Alliance Real Estate Group Ltd.” Furthermore, it was stated outright in paragraph 44 of this decision that “[E.R.] has not acted responsibly in the past in this regard, and I have no confidence that he will do so in respect of this appeal.”

When reviewing the evidence and testimony of the parties, while it is E.R.’s belief that his costs of representing the Tenant are tied directly to the rent, this was his choice to make and it is unclear to me how the “billables and receivables” for his own personal time are linked to the Tenant’s requirement to pay the rent each month. Furthermore, if the sums held by the Tenant’s agent are in compensation for representing the tenant then the Tenant’s agent’s claim for payment is against the Tenant and not the Landlord. Consequently, I am satisfied that these are entirely separate, and differing issues.

As outlined above, Section 26 of the *Act* requires that rent must be paid by the Tenant when due according to the tenancy agreement. Moreover, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. While the Notice was disputed, E.R.’s repeated, identical arguments in this case echo the Justice’s assessment that E.R.’s actions and behaviour demonstrate a “stubborn refusal” and that his arguments “border on the obtuse”. There is no evidence before me of any Court ruling that costs be awarded in lieu of rent, and E.R. has not provided any other evidence that established that the Tenant had a valid reason which permitted her to withhold the rent under the *Act*.

I find that the Justice’s foresight in his comment that “[E.R.] has not acted responsibly in the past in this regard, and I have no confidence that he will do so in respect of this appeal” reinforces the notion that his unfounded actions have now jeopardized the tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with Section 26 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a Monetary Order in the amount of **\$8,050.00**, which is comprised of rent owed for the months of August 2018 to February 2019.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
August 2018 – Outstanding rent	\$1,150.00
September 2018 – Outstanding rent	\$1,150.00
October 2018 – Outstanding rent	\$1,150.00
November 2018 – Outstanding rent	\$1,150.00
December 2018 – Outstanding rent	\$1,150.00
January 2019 – Outstanding rent	\$1,150.00
February 2019 – Outstanding rent	\$1,150.00
Total Monetary Award	\$8,050.00

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of **\$8,050.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: March 13, 2019

Residential Tenancy Branch