



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, CNR, OLC, FFT/ OPR, MNRL, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- disputation of a rent increase, pursuant to section 43;
- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy, pursuant to section 47;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants testified that the landlords were served with their notice of dispute resolution package by registered mail but were not certain on what date. The landlords confirmed receipt of the tenants' dispute resolution package but did not know on what date. I find that the landlords were served with this package in accordance with sections 89 and 90 of the *Act*.

The tenants testified that they originally attempted to file a second application for dispute resolution to cancel a One Month Notice to End Tenancy for Cause on April 1,

2019; however, there was some confusion at the Service B.C. office and they were unsuccessful. The tenants testified that they successfully filed an amendment to cancel the One Month Notice to End Tenancy for Cause on April 3, 2019, which was served on the landlords via registered mail. The landlords' confirmed receipt of the tenants' amendment package but could not recall on what date. I find that the landlords were served with the tenants' amendment in accordance with section 88 of the *Act*.

The landlords testified that they served the tenants with their application for dispute resolution via registered mail but could not recall on what date. The tenants' confirmed receipt of the landlords' application for dispute resolution but could not recall on what date. I find that the tenants were served with the landlords' application in accordance with section 89 of the *Act*.

Both parties agreed that the landlords personally served their first amendment on the tenants. Neither party could recall on what date. I find that the tenants were served with the landlords' first amendment package in accordance with section 88 of the *Act*.

The landlords testified that they served their second amendment on the tenants via registered mail but could not recall on what date. The tenants' confirmed receipt of the landlords' second amendment package but could not recall on what date. I find that the tenants were served with the landlords' second amendment in accordance with section 88 of the *Act*.

I note that 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 is compliant with the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the continuation of this tenancy and the landlord's monetary claim for unpaid rent are not sufficiently related to any of

the other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the notices to end tenancy.

The other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notices to end tenancy. I exercise my discretion to dismiss all of the claims with leave to reapply except:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy, pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72;
- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Amendment

Upon review of the tenants' and landlords' applications for dispute resolution I note that the tenants' application contains the middle names of the parties and the landlords' application does not. As the spelling of the middle names was not confirmed at the hearing, I amend the tenants' application to remove the middle names of the parties, pursuant to section 64 of the *Act*.

I note that the tenants' application for dispute resolution states that the address of the subject rental property includes the description "upper" and the landlords' application for dispute resolution does not. Pursuant to section 64 of the *Act*, I amend the landlord's application to include the "upper" description to the address of the subject rental property.

The tenants' application lists landlord K.J. twice, once with her full middle name and once with an initial. Pursuant to section 64 of the *Act*, I amend the tenants' application to remove the duplication.

Issues to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
2. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?
4. Are the landlords entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
5. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
6. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?
7. If the tenants' application to cancel the One Month Notice to End Tenancy is dismissed and the landlords' notice complies with section 52 of the *Act*, are the landlords entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. The subject rental property is a house with an upper and lower suite. The parties entered into a fixed term tenancy for the upper suite which was set to run from August 15, 2018 to August 15, 2019 (the "first tenancy agreement"). Rent for the upper suite was \$2,395.00 due on the first day of each month. The first tenancy agreement was entered into evidence.

Both parties agreed to the following facts. In January of 2019 the landlords and tenant C.S. entered into a new month to month tenancy agreement starting February 1, 2019 for the entire house (the "second tenancy agreement"). Rent for the entire house was \$3,595.00 due on the first day of each month. The addendum to the second tenancy agreement states in part that:

- the landlord agrees to allow the tenants to sublease the lower suite as of February 1, 2019;
- the tenant is solely responsible for rent payment as outlined in the tenancy agreement; and
- the tenant is responsible for advertising of the lower suite.

The second tenancy agreement and addendum were entered into evidence. Tenant J.S. testified that he was out of town when tenant C.S. signed the second tenancy agreement and he did not agree to rent the entire house. The landlord testified that previous tenants of the lower suite paid \$1,500.00 per month in rent, so by subleasing the lower suite, the tenants could earn a profit of approximately \$300.00 per month and the landlords would not have to mediate disputes between the upper and lower suites.

Tenant C.S. testified that she made a verbal agreement with landlord R.J. at the time of signing the second tenancy agreement that if she was unable to find a tenant for February 1, 2019, she would not be responsible for paying the difference between rent under the second tenancy agreement and rent under the first tenancy agreement. Tenant R.J. testified that he and tenant C.S. did not have the above described verbal agreement and that the responsibilities of the landlords and the tenant were carefully laid out in the second tenancy agreement and addendum.

Tenant C.S. testified that she tried to find new tenants for the lower suite but was unable to do so. Both parties agreed that the tenants paid \$2,395.00 towards February 2019's rent on February 7, 2019.

Both parties agree to the following facts. Tenant C.S. informed the landlords that she was not able to find a new tenant for February 1, 2019 and wished to continue with the first tenancy agreement. The landlords found new tenants for the lower suite for March 1, 2019. The landlord drafted a third tenancy agreement for the upper suite at a rental rate of \$2,395.00 on a month to month basis. The tenants did not sign the third tenancy agreement.

The tenants testified that they did not sign the third tenancy agreement because they wished to continue with the first fixed term tenancy agreement.

Both parties agreed that the landlords personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent effective March 23, 2019 (the "10 Day Notice"). The 10 Day Notice states that the tenants failed to pay rent in the amount of \$1,200.00

that was due on February 1, 2019. The tenants have not paid \$1,200.00 stated as outstanding on the 10 Day Notice.

Both parties agreed that the tenants paid rent for the following months on the following dates:

- September 2018: September 6, 2018;
- November 2018: November 9, 2018;
- December 2018: partial payment November 21, 2018, remainder paid December 8, 2018;
- February 2019: February 7, 2019; and
- March 2019: March 7, 2019.

The landlords testified that they posted a One Month Notice to End Tenancy with an effective date of May 1, 2019 on the tenants' door on March 23, 2019. The tenants' testified that they received the One Month Notice on March 23, 2019.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent; and
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

Tenant J.S. testified that after he entered into the first tenancy agreement he lost his job and his payday changed to the 7th of the month. Tenant J.S. testified that he told the landlords that his rent would come in after that date and that they were understanding of his situation.

The landlords testified that never agreed that rent could be paid after the first day of every month. The landlords testified that they were understanding the first time the tenants were late with their rent, but it has become an ongoing problem and that is why they served the One Month Notice on the tenants.

Analysis

I find that the first tenancy agreement became null and void when the second tenancy agreement was entered into by the landlords and tenant C.S. While tenant J.S. was not aware of tenant C.S.'s actions, the presence of both tenants is not required to end the

tenancy. I find that effective February 1, 2019, the terms of the second tenancy agreement governed the relationship between the landlords and tenant C.S.

The testimony of the parties in regard to the presence of a verbal agreement to relieve tenant C.S. of her rental payment obligations under the second tenancy agreement is conflicting. The onus or burden of proof is on the party making the claim. I find that the tenants have not proved, on a balance of probabilities, that landlord R.M. agreed to relieve tenant C.S. of her rental payment obligations under the second tenancy agreement. Without further evidentiary support of the alleged verbal agreement, I rely on the written terms of the signed second tenancy agreement and addendum as written.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that tenant C.S. was obligated to pay the monthly rent in the amount of \$3,595.00 on February 1, 2019. I find that the tenant only paid \$2,395.00 towards February 2019's rent. Pursuant to section 67 of the *Act*, I find that tenant C.S. owes the landlords \$1,200.00 in unpaid rent.

I find that effective March 1, 2019 the landlords and the tenants entered into a verbal periodic tenancy agreement at a rental rate of \$2,395.00 per month, due on the first day of each month. I find that the second tenancy agreement was only in force for the month of February 2019.

I find that the 10 Day Notice was served on the tenants in accordance with section 88 of the *Act*. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 46(1) of the *Act* states 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 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that 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.

As the tenants did not have a valid reason to withhold rent and did not pay the overdue rent within five days of receiving the 10 Day Notice, I dismiss the tenants' application to

cancel the 10 Day Notice. I uphold the 10 Day Notice and find that it is valid. I therefore find that the landlords are entitled to an Order of Possession for nonpayment of rent, in accordance with section 46 and 55 of the *Act*.

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenants on March 23, 2019, in accordance with section 88 of the *Act*. Upon review of the One Month Notice I find that it conforms to the form and content requirements of section 52 of the *Act*.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

I find that the tenants have not proved, on a balance of probabilities, that the landlords agreed to change the date rent was due. All of the tenancy agreements entered into evidence state that rent is due on the first day of each month. I find that the tenants were late paying rent on the following months: September 2018, November 2018, December 2018, February 2019 and March 2019. I therefore dismiss the tenants' application to cancel the One Month Notice without leave to reapply.

Section 55 of the *Act* states 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:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the One Month Notice complies with section 52 of the *Act* and the tenants' application to cancel the One Month Notice was dismissed, the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As I have already determined that the landlords are entitled to an Order of Possession based on section 46 of the *Act* and section 47(1)(b), I decline to consider if the landlords are entitled to an Order of Possession under section 47(1)(d)(i).

As the tenants were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on May 31, 2019**, which should be served on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlords against tenant C.S. in the amount of \$1,300.00.

The landlords are provided with this Order in the above terms and tenant C.S. must be served with this Order as soon as possible. Should tenant C.S. 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: May 10, 2019

Residential Tenancy Branch