



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KADIUM REGAN DEVELOPMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR-DR

Introduction

This hearing involved cross applications made by the parties. On June 14, 2019, the Applicants B.R. and M.L. applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act").

On June 12, 2019, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Act*.

E.S. and M.S. attended the hearing as representatives of the Tenant's estate. B.R. and M.L. attended the hearing purporting to be tenants and a party to this hearing. M.D. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

B.R. and M.L. advised that while they made the application for Dispute Resolution, they did not serve the Notice of Hearing package to the Landlord as they were "confused" about the process. During the hearing, they advised that they lived in the rental unit with Tenant R.S., that he owned the rental unit at the time, and that they shared a kitchen and bathroom with him. They stated that they paid rent to him and had a tenancy agreement in writing; however, they did not submit this as documentary evidence.

During the hearing, it was determined that the property was sold by Tenant R.S. in April 2019 and was rented back to him by the Landlord. A signed tenancy agreement was submitted as documentary evidence indicating that only Tenant R.S. had engaged into a tenancy with the Landlord, commencing April 30, 2019. The Landlord advised that Tenant R.S. had not paid any rent since the commencement of this tenancy agreement, and that he subsequently passed away in May 2019.

Based on B.R. and M.L.'s affirmed testimony, I am satisfied that they shared the kitchen and/or bathroom with Tenant R.S., who at the time was the owner of the property. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares bathroom or kitchen facilities with the owner of the accommodation.

Consequently, I find that even if B.R., M.L., and Tenant R.S. intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy.

Furthermore, as there is no evidence before me that either B.R. or M.L. had ever paid any rent to the Landlord, I am satisfied that neither B.R. nor M.L. are tenants as defined under the *Act* and they had no authority to dispute the Notice on behalf of Tenant R.S. It is clear that B.R. and M.L. were simply occupants of Tenant R.S. and have no rights or responsibilities under the *Act*. As such, I dismiss their application without leave to reapply.

As B.R. and M.L. were determined to have no legal right to participate in the hearing, they were asked to exit the conference call; however, they refused to do so. At 11:27 AM, B.R. and M.L. were forcibly disconnected from being able to participate in the hearing.

The Landlord advised that Tenant R.S. had passed away in May 2019, that E.S. and M.S. were designated as administrators of the estate of Tenant R.S., and the Landlord provided documentation to support this. E.S. and M.S. confirmed this information and the hearing continued between the Landlord and the estate of Tenant R.S., who were authorized to attend on behalf him.

The Landlord advised that the Notice of Hearing package was posted to the door of the rental unit and sent by registered mail as well on July 12, 2019. This package was also emailed to the estate of Tenant R.S. E.S. confirmed that he received this email. Based on this undisputed testimony, I am satisfied that the estate of Tenant R.S. was served with the Notice of Hearing package.

The Landlord also advised that his evidence was posted to the door of the rental unit and sent by registered mail as well on June 24, 2019. This evidence package was also emailed to the estate of Tenant R.S. E.S. confirmed that he received this email. Based on this undisputed testimony, I am satisfied that the estate of Tenant R.S. was served with the Landlord's evidence package.

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.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started between only Tenant R.S. and the Landlord on April 30, 2019. Rent was established at \$2,000.00 per month, due on the first day of each month. A security deposit was not paid. A copy of this written tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Notice was served by being posted on the door and being sent by registered mail on June 3, 2019 and he provided proof that the registered mail was signed for on June 4, 2019. E.S. also confirmed that they received a copy of the Notice. The Notice indicated that \$4,000.00 was outstanding on May 1, 2019. The Notice also indicated that the effective end date of the tenancy was July 15, 2019.

All parties agreed that the rent had not been paid to the Landlord, that Tenant R.S. had passed away in May 2019, and that occupants that Tenant R.S. allowed to reside in the rental unit were still occupying the property. The Landlord and the estate of Tenant R.S. agreed that the rent had not been paid, that the Monetary Order was of no importance, but the Order of Possession was necessary to be granted.

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.

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 Tenant R.S. was served the Notice by being posted to the door of the rental unit and sent by registered mail as well on June 3, 2019. This registered mail package was signed for on June 4, 2019 and E.S. confirmed that they received a copy of the Notice. According to Section 46(4) of the *Act*, the Tenant has 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 June 9, 2019, the estate of Tenant R.S. must have paid the rent in full by this day at the latest or made an Application to dispute the Notice on June 10, 2019. As outlined above, 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 Notice being received. Moreover, there is no evidence before me that Tenant R.S. had a valid reason for withholding the rent pursuant to the *Act*. Furthermore, while the Notice was disputed, the occupants who did so had no authority to dispute the Notice on behalf of Tenant R.S. As per my findings above, their application to dispute the Notice was dismissed in its entirety.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, and as Tenant R.S. has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

Conclusion

Based on the above, I hereby Order that the application to dispute the Notice is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the estate of Tenant R.S. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 21, 2019

Residential Tenancy Branch