



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONCERT PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL, CNR, LRE, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

In their application, Tenants CP and KL-W applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant DP advised that they were the father of Tenant CP, and had co-signed the original two fixed term Residential Tenancy Agreements (the Agreements), but had never resided in this rental unit. Tenant KL-W joined the teleconference about 15 minutes after the scheduled start time. Tenant KL-W stated that Tenant CP had looked after all matters relating to payments of rent and interaction with the landlord, but there was now a restraining order in place preventing Tenant CP from having any contact or communication with Tenant KL-W.

As both of the tenants who attended the hearing confirmed that the landlord posted the 10 Day Notice on the door of this rental unit on August 6, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As both tenants in attendance confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail, I find that these tenants were duly served with this package in accordance with section 89 of the *Act*. These tenants also confirmed that they received copies of the landlord's written evidence sent by registered mail. The landlord also entered into written evidence copies of the Canada Post Tracking Numbers and Customer Receipts to confirm that the landlord sent all three parties copies of the landlord's dispute resolution hearing package and written evidence by registered mail. I find that Tenant CP was also deemed served with the landlord's dispute resolution hearing package and written evidence on the fifth day after the registered mailing of these documents and in accordance with sections 88, 89 and 90 of the *Act*.

The landlord testified that they discovered a copy of the dispute resolution hearing package of Tenants CP and K L-W under the landlord's door on October 11, 2019. This hearing package was not delivered by these tenants within three days of being provided with the Notice of Hearing regarding their August 22, 2019 application for dispute resolution. Although the tenants' application was not served in accordance with section 89 of the *Act* or within the time frames established by the RTB's Rules of Procedure, I am satisfied that by October 11, 2019, the landlord was aware that the tenants had filed their cross-application disputing the landlord's 10 Day Notice. Under these circumstances and in accordance with paragraph 71(1)(c) of the *Act*, I find that the landlord has been sufficiently served with notice of the tenants' application. The tenants supplied no written evidence for this hearing.

At the commencement of this hearing, Landlord Representative SB (the landlord) advised that the tenants had not paid rent or utilities for September or October 2019. After some discussion, the landlord asked for an increase in the amount of their monetary award from the \$2,632.00 identified in their August 2019 application for dispute resolution to a total of \$6,414.82, the amount they claim is owing for unpaid rent and utilities, and \$25.00 NSF cheque fees applied during the last three months of this tenancy. The landlord testified that this requested amount did not include any provision for parking, which is apparently part of an agreement not entered into written evidence by the landlord for this hearing. Since the tenants realized that rent and utilities had not been paid since the landlord issued the 10 Day Notice, I allowed the landlord's request

to increase the amount of the requested monetary award to \$6,414.82, plus the \$100.00 recovery of the filing fee for this application.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to recover the filing fee for this application from the tenant? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The landlord entered into written evidence a copy of a pair of one-year fixed term Agreements signed by all three tenants and the landlord. Although the date on the first of these Agreements was March 14, 2015, the parties agreed that this was an incorrect date, which should have been March 14, 2016, as the first of the tenants' one-year fixed term tenancies did not commence until July 1, 2016. On March 26, 2017, all three tenants and the landlord signed a second one-year fixed term Agreement which was to cover the period from July 1, 2017 until June 30, 2018. When this second Agreement ended, the tenancy continued as a month-to-month tenancy with no new Agreement signed by any of the parties.

Monthly rent was initially set at \$1,740.00, payable in advance on the first of each month. The landlord entered into written evidence copies of Notices of Rent Increase, which eventually increased the monthly rent to \$1,923.00, plus a \$150.00 parking charge, which appears to have been subject to a separate agreement and was not included in the Agreement or any of the materials provided by the landlord to support their application for a monetary award. The parties agreed that the landlord continues to hold the tenants' \$870.00 security deposit paid when this tenancy began.

The landlord entered into written evidence a history of multiple notices to end this tenancy which have been issued by the landlord since this tenancy started. The landlord issued, but rescinded a Notice to End Tenancy earlier this year. The landlord also entered into written evidence a copy of Tenant CP's May 16, 2019 written notice to end this tenancy by May 31, 2019. However, the landlord asked that Tenant CP and Tenant K L-W meet with the landlord to confirm that both tenants planned to vacate the rental unit by that date. The tenants did not contact the landlord further about this proposed end to this tenancy and the tenancy continued.

The landlord's 10 Day Notice of August 6, 2019 identified \$2,098.00 in rent and utilities owing as of that date. The effective date on that Notice was August 11, 2019, corrected at this hearing to August 19, 2019, the earliest date when the Notice could have taken effect. The amount cited on the 10 Day Notice included a \$25.00 NSF cheque charge, \$1,923.00 in unpaid rent and \$150.00 for parking.

Both tenants who attended this hearing confirmed that they were unaware of any payments that have been made to the landlord for this tenancy since the 10 Day Notice was issued. Neither tenant attending had any questions about the landlord's request for an Order of Possession based on the 10 Day Notice and the increased amount of the monetary award the landlord was seeking. Both tenants in attendance accepted that the landlord's calculations for unpaid rent, utilities and the NSF fees were correct.

Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “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) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants' August 22, 2019 application was submitted well after the five day period for filing this dispute had expired on August 14, 2019. Accordingly, I find that the tenants are conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy ended on August 19, 2019, the corrected effective date of the 10 Day Notice. For this reason, I dismiss the tenants' application without leave to reapply.

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not

vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Turning to the landlord's application for a monetary award, I first note that those signing an Agreement become jointly and severally liable for all of the rights and responsibilities that are attached to that Agreement. This provision is also noted in Section 34 of the Agreement. In the absence of any signed Agreement between the parties following the expiration of the second one-year fixed term Agreement, those signatories to the second fixed term Agreement remained liable for damages arising out of contraventions of the Agreement.

Since the parties agree that the tenancy did not end as of May 31, 2019, and both residents who were then living in the rental unit continued to occupy the premises past May 31, 2019, I find that the tenancy has continued, even though the tenants have received a 10 Day Notice which was to have ended this tenancy by August 19, 2019.

I allow the landlord's application for a monetary award for \$1,923.00 in unpaid rent and a \$25.00 NSF fee for that month. I also allow the landlord's application for unpaid utilities in the amount of \$480.29, the amount cited as owing as of the end of August 2019.

Section 57(3) of the Act establishes a landlord's entitlement to compensation from tenants when tenants overhold beyond the corrected effective date of a valid Notice to End Tenancy. In this case, the landlord is entitled to their loss of rent for the month of September 2019 in the amount of \$1,923.00. Under these circumstances, the landlord would not be entitled to recovery of \$25.00 in NSF fees as the tenancy had actually ended by September 1.

Based on the date of this hearing, and the likelihood that it will take some time for the landlord to obtain actual possession of the rental unit, advertise its availability and prepare for new tenants, I accept that the landlord is entitled to the recovery of a further \$1,923.00 that would have been obtainable from new tenants for the month of October 2019. Again, the landlord is not eligible for recovery of NSF fees for October 2019.

Although the landlord may be entitled to further unpaid utility bills arising out of this tenancy, these bills were not part of the landlord's original application and have not been entered into written evidence. For this reason, I make no order with respect to utility bills that have become owing since August 31, 2019. The landlord is at liberty to

apply for the recovery of any additional utility bills that remain owing from this tenancy beyond those which became due on August 31, 2019. This may only become apparent once the tenancy ends and final utility bills are received.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenants' application is dismissed without leave to reapply. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and utilities, and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent Owing as of August 1, 2019 plus NSF fee (\$1,923.00 + \$25.00 = \$1,948.00)	\$1,948.00
Unpaid Utilities Owing as of August 31, 2019t	480.29
Overholding Losses Incurred for September 2019	1,923.00
Overholding Losses Incurred for October 2019	1,923.00
Less Security Deposit	-870.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5,504.29

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 17, 2019

Residential Tenancy Branch