



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 00893906 BC Ltd and
J. Gordon Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNRL-S, FFL, LRE, OLC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by the Parties.

The Tenant applied for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), to suspend the Landlord's right to enter, and for an order for the Landlord to comply with the Act and tenancy agreement.

The Landlords applied for an order of possession based on unpaid rent of \$3,395.00, which they said was owing when the 10 Day Notice was served; they requested a monetary order for unpaid rent which they said has grown to \$10,185, as of October 1, 2019, and to recover the \$100.00 Application filing fee.

The Landlords' counsel, N.J. and N.D. ("Counsel"), as well as a representative of the Landlord companies, D.B. ("Representative"), appeared at the hearing; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 29 minutes and was monitored throughout this time. The only people to call into the hearing were the Counsel and the Representative, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, were the Counsel and the Representative.

The Counsel and the Representative gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to answer my questions, and to make submissions to me.

As both Parties filed applications and these were scheduled to be heard at the same time, service of the applications and Notice of Hearing is not in issue.

Preliminary and Procedural Matters

Counsel provided their email address at the outset of the hearing and provided documents containing the Tenant's email address. Counsel confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

As the Tenant did not attend the hearing to present the merits of his claims, I have dismissed his Application wholly without leave to reapply.

At the outset of the hearing, I asked the Counsel and Representative for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Parties advised me of the registered owner of the property and the property management company representing the owner who signed the tenancy agreement. Accordingly, I have amended the Landlord's name in the Application to reflect this, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or is it valid?
- If the Landlords are entitled to a monetary order, in what amount?
- Are the Landlords entitled to recovery of their Application filing fee?

Background and Evidence

Based on the testimony and documentary evidence of the Counsel and Representative, I find that the Tenant was served with the 10 Day Notice on August 12, 2019. The 10 Day Notice:

- was signed,
- was dated,
- had the grounds,
- had the rental unit address, and
- was posted on the rental unit door on August 12, 2019.

The 10 Day Notice had an effective vacancy date of August 22, 2019, which should have been August 25, 2019, pursuant to section 90 of the Act; however, pursuant to section 53 of the Act, an incorrect effective date is automatically changed to the earliest date that complies with the Act. Accordingly, this was not a fatal error on the 10 Day Notice.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The 10 Day Notice also explained that the Tenant had five days to dispute the Notice. The Tenant applied to cancel the 10 Day Notice on August 16, 2019; however, he did not attend the hearing to present the merits of his position.

Counsel testified that the monthly rent for the rental unit is \$3,395.00, which is due on the first day of the month, and that the Tenant paid the Landlords a security deposit of half a month's rent or \$1,697.50, and no pet damage deposit.

The Counsel and the Representative said that the Tenant has not paid the Landlord any rent since July 2019, but he continues to live in the rental unit as of the October 21, 2019 hearing date.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Tenant has not paid all the rent due to the Landlords, and therefore. I also find that the 10 Day Notice is consistent with section 52 of the Act in form and content. As a result, I find that the 10 Day Notice is valid and should not be cancelled. Under section 26 of the Act, the Tenant could not withhold rent unless he had an Order from the Residential Tenancy Branch allowing him to do so, or, if the Tenant had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenant had no Order, nor did he submit any evidence that he had paid for emergency repairs. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlords. Based on the evidence before me and the legislation, I dismiss the Tenant's Application.

The effective date of the 10 Day Notice was August 25, 2019. Having found the Tenant has failed to pay all rent when due, I find that the Landlord is entitled to an Order of Possession effective **two days after service**. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlords have established a total monetary claim of **\$10,285.00**, comprised of \$3,395.00 in rent due for the three months of August, September and October 2019, and the \$100.00 filing fee paid by the Landlords for their application.

The Landlords are authorized to retain the Tenant's security deposit of \$1,697.50 in

partial satisfaction of the claim; I grant the Landlords a Monetary Order under section 67 for the balance due of **\$8,587.50**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Landlords are successful in their application.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords are successful in the monetary claim for unpaid rent of \$10,185.00. I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$1,697.50 in partial satisfaction of the Landlords' monetary claim.

I grant the Landlords a monetary order under section 67 of the Act from the Tenant for the balance owing in the amount of **\$8,587.50**.

This Order must be served on the Tenant by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 22, 2019

Residential Tenancy Branch