



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Park Royal Ventures
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNRL, FFL

Introduction

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

- cancellation of the 10 day notice for unpaid rent or utilities (the "notice"), pursuant to section 46;
- a monetary order for damage or compensation, pursuant to section 67;
- a monetary order for the cost of emergency repairs for the tenant, pursuant to section 33;
- an order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62;
- an order for regular repairs, pursuant to sections 32 and 62; and
- an order to reduce the rent for repairs, pursuant to section 65.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

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

The landlord representative and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with services of both applications for dispute resolution and evidence. Both parties confirmed receipt

of each other's application package. In accordance with sections 88 and 89 of the Act, I find that both landlord and tenant were duly served with the applications and evidence.

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 10 day notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's 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 notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

- Is the tenant entitled to an order for the cancellation of the landlord's notice, pursuant to section 46?
- Is the landlord entitled to an Order of Possession, pursuant to section 55?
- Is the landlord entitled to a monetary award for unpaid rent, pursuant to section 67?
- Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72?

Background and Evidence

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

The parties agreed that the tenancy started in September 2010, rent is currently \$1,541.00 (\$1,511.00 for rent and \$30.00 for parking) and that the landlord still holds a security deposit collected at the outset of the tenancy of \$575.00. The tenant continues to reside at the rental property.

The tenant's application was filed on September 24, 2019 and the landlord's application was filed the next day.

The landlord submitted the following documents:

- a copy of the notice, dated September 16, 2019, posted on the door of the tenant on that date, with an effective date of September 26, 2019. That notice indicates rental arrears of \$697.00 as of September 01, 2019;
- a copy of the Proof of Service of the notice showing that the landlord served the notice to the tenant by way of posting it to the door of the rental unit on September 16, 2019 at 10:25AM. The Proof of Service form establishes that the service of the notice was witnessed and a name and signature for the witness are included on the form;
- notices of rent increase dated June 24, 2011, June 26, 2012, June 21, 2013, June 17, 2014, June 18, 2015, June 21, 2016, June 20, 2017, June 19, 2018, June 20, 2019. The notice dated June 19, 2018 states that rent will increase by \$56.00 effective on October 01, 2018, and the new rent will be \$1,475.00;
- a copy of the residential tenancy agreement signed by both parties on September 01, 2010:
 - Clause 9 of the contract states that rent is due on the first calendar day of each month;
 - Clause 10 of the contract states that late payment is subject to an administrative fee of \$25.00.
- a ledger showing that the tenant is in arrears for \$697.00 as of September 09, 2019;
- a monetary order worksheet (RTB from 37), indicating unpaid rent of \$697.00 and the filing fee of \$100.00, totaling \$797.00 as of September 25, 2019.

The landlord representative testified that:

- the rent arrears originated from the tenant not paying the rent increase that was effective on October 01, 2018, and one late payment fee;
- the tenant signed a tenancy agreement that states rent is due on the first calendar day of each month;

- there was never a policy to allow a grace period. However, when most tenants paid by cheque the landlord needed a few days to process hundreds of rent payments and the notices to end tenancy for unpaid rent would only be issued a few days later. As now most tenants are paying rent through electronic means, the landlord is able to serve the notices to end tenancy for unpaid rent and charge the late rent fee immediately after the date rent is due;
- the landlord did not authorize the tenant to not pay the rent increase dated June 19, 2018;
- payment of rent was always accepted.

The tenant submitted the following documents:

- a notice dated September 09, 2019, stating that rent is due on the first of the month (attachment 1);
- a declaration of another tenant at the same building stating that there was a policy “allowing the tenants a grace period of seven (7) days in which to pay rent after the first of the month. I further affirm that a few years ago, a note was publicly posted in the building stating that a grace period of two (2) days was being allowed for the payment of rent after the first of the month.” (attachment 3);
- a request for disclosure of information, dated September 20, 2019, requesting the landlord to provide a copy of all memos and notices posted during his tenancy (attachment 4);
- a copy of ‘late payment notice’ issued on August 04, 2016, when the tenant was charged the \$25.00 late payment fee (attachment 6);
- a copy of ‘late payment notice’ issued on May 02, 2017, when the tenant was charged the \$25.00 late payment fee (attachment 7);
- a copy of a cheque dated September 01, 2019, in the amount of \$1,449.00, received by the landlord on September 09, 2019 (attachment 8).

The tenant testified that:

- he has been living at the rental unit since 2010, and there was a unilateral policy change regarding late payment of rent;
- he received the notice posted to his door, around September 16, 2019, but he does not recall the exact day;
- the \$697.00 rental arrears include a late fee and he disputes that fee;
- he received the notices of rent increase produced by the landlord as evidence;
- he attempted to pay rent for the month of September 2019 on September 04, 2019, and the landlord refused to receive the payment on that date;
- the rent for the month of September 2019 was paid on September 09, 2019;

- there was a verbal agreement with the landlord to pay rent without the rent increase mentioned in the notice of rent increase dated June 19, 2018;
- in November 2017 a cheque issued by the tenant to pay rent was lost by the landlord;
- his ex wife lives in the same residential complex, and the tenant shares the custody of their child;
- if there was no verbal agreement for paying rent without the 2018 increase, the parking fee should have been applied towards the difference of the rent, and the late payment fee;
- late payment of parking is not a basis for an order of possession.

Analysis

Section 88 (a) of the Act states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

[...]

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

Based on the testimony of the parties, I find that the landlord served the notice on the tenant by attaching it to the door on September 16, 2019. I find that this meets the service requirements set out at Section 88 (g) of the Act. I also find that the tenant is deemed served on September 19, 2019, in accordance with Section 90 (c) of the Act. Thus, pursuant to section 53 of the Act, the corrected effective date of the 10 day notice to end tenancy is September 29, 2019.

The written tenancy agreement signed by the landlord representative and the tenant on September 01, 2010, states:

09. **PAYMENT OF RENT.** Rent must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date. [...]

10. **ARREARS.** Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord. [...]

The landlord representative explained in her testimony that there was never a policy to allow a grace period for late rent. In the past, when most tenants paid rent by cheque, the notices to end tenancy for unpaid rent were only served after a few days because the landlord representatives needed some days to process all the payments. Currently, most tenants are paying by electronic means so the landlord's representatives can serve the notices to end tenancy the day after rent is due.

The landlord's representative testified that the landlord sent late payment notices to the tenant during the tenancy charging the late payment fee (attachments 6 and 7, provided by the tenant). Thus, the right of the landlord to charge the late payment fee was never waived.

Based on the clauses 09 and 10 of the tenancy agreement, and the landlord representative's testimony, I find that the tenant is obligated to pay the late payment fee when rent is paid after the first calendar day of the month.

The tenant also testified that he attempted to pay rent for the month of September 2019 in September 04, 2019. The ledger provided by the landlord shows the payment of September's rent happened on September 10, 2019. Since that payment happened after the first calendar day of the month, I find that the tenant is obligated to pay the late payment fee. It makes no difference if rent payment happened on September 04 or 10, 2019.

I find that late payment fee is owed regardless of the specific payment date, because rent was paid after the first calendar day of September 2019.

The tenant affirmed he received the notices of rent increase, but there was a verbal agreement with the landlord to continue to pay rent without the rent increase mentioned in the notice of rent increase dated June 19, 2018. The landlord representative denied this verbal agreement.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The testimony of the parties in regard to the presence of a verbal agreement is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the tenant) has not met the burden on a balance of probabilities and the claim fails.

I find that the tenant has not proved, on a balance of probabilities, that he and the landlord had a verbal agreement allowing him not to pay the rent increase stated on the rent increase notice dated June 19, 2018.

In this case, the landlord provided copies of the notices of rent increase and the tenant affirmed he received them. When giving testimony about the rent increase, at times the tenant was vague, using expressions such as "I'm not sure what to say". Furthermore, the tenant testimony that the landlord, a commercial company, did a verbal agreement in order not to charge the rent increase, after serving a notice of rent increase, is of little credibility. Therefore, I accept the landlord's version that there was no verbal agreement to not charge the rent increase of \$56.00. I therefore find that the tenant was required to pay rent in the amount of \$1,475.00 from October 1, 2018 until the effective date of the next notice of rent increase he received.

The ledger provided as evidence also shows that on September 04, 2018 the tenant paid \$1,449.00 for the rent due on September 01, 2018 and had no outstanding balance. The rent due on October 01, 2018 (first one with the increase of \$56.00) was paid on October 03, 2019, but the amount paid was the same one as before the rent increase, thus there was a balance of \$56.00.

I find that the difference of \$56.00 that the tenant has not been paying since October 01, 2018 accumulated to \$672.00 on September 10, 2019. There was also one late payment fee of \$25.00 charged on September 10, 2019. I find that the total rental arrears are \$697.00.

I also find that there is no provision in the Act that the landlord should apply the parking fee towards a balance of unpaid rent. Even if there was such a provision in the Act, the tenant would still be in rental arrears.

Sections 46(4) and (5) of the Act state:

Landlord's notice: non-payment of rent

46 (1)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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[...]

(4)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.

(5)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

- (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b)must vacate the rental unit to which the notice relates by that date.

Sections 55 (2) and (3) of the Act state:

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a)a notice to end the tenancy has been given by the tenant;
- (b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1)the tenancy agreement is a sublease agreement;
- (d)the landlord and tenant have agreed in writing that the tenancy is ended.

(3)The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Therefore, pursuant to section 55 of the Act, I find that the landlord is entitled to an order of possession, effective 2 days after service.

I also find, pursuant to sections 67 and 72 of the Act, that the landlord is entitled to a monetary award in the amount of \$697.00 (12 months of the rent increase of \$56.00 and one late payment fee of \$25.00).

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, pursuant to section 72 of the Act.

Conclusion

The tenant's application for dispute resolution is dismissed, with leave to reapply in regards to:

- a monetary order for damage or compensation, pursuant to section 67;
- a monetary order for the cost of emergency repairs for the tenant, pursuant to section 33;
- an order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62 of the act;
- an order for regular repairs, pursuant to sections 32 and 62 of the Act; and
- an order to reduce the rent for repairs, pursuant to section 65 of the Act.

I grant an order of possession to the landlord effective 2 days after service. The landlord must serve this order on the tenant as soon as possible. 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.

I grant the landlord a monetary order in the amount of \$797.00 for unpaid rent, late payment fee and for the recovery of the filing fee for this application. The landlord is provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants 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: December 06, 2019

Residential Tenancy Branch