



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC FFL OPRM-DR FFL CNR CNC FFT MNDCT

Introduction

This hearing was scheduled to consider applications from both the tenant and landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- a monetary award for damages and loss pursuant to section 67; and
- recovery of the filing fees for this application from the landlord pursuant to section 72.

The landlord seeks:

- an Order of Possession pursuant to section 55;
- a monetary award pursuant to section 67; and
- recovery of the filing fees for their applications from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the “landlord”).

As both parties were present service of materials was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find each party was served in accordance with sections 88 and 89 of the Act with the respective materials.

At the outset of the hearing, the landlord requested to ament the monetary amount of their claim. The landlord testified that since their application was filed additional rent has become due and owing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I

amend the landlord's Application to increase the landlord's monetary claim from \$2,870.00 to \$5,890.00 as the additional amount of rent arrears could be reasonably anticipated.

Issue(s) to be Decided

Should the 10 Day Notice and 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is either party entitled to a monetary award?

Is either party entitled to recover their filing fees from the other?

Background and Evidence

The landlord testified that the monthly rent for this tenancy is \$2,870.00 payable on the first of each month. The tenant is also responsible for paying for a parking space in the amount of \$75.00. A security deposit of \$1,350.00 was collected at the start of the tenancy and is still held by the landlord. The tenant failed to pay rent for December 2019 and January 2020. The landlord issued a 10 Day Notice dated December 8, 2019. The tenant did not make any payment against the notice. The landlord testified that as of the date of the hearing the rental arrear for this tenancy is \$5,890.00.

The tenant testified that they have not paid rent for December 2018 or January 2019. The tenant submits that the rent for this tenancy was originally \$2,775.00 inclusive of parking space and that the amount was raised throughout the tenancy without proper notice by the landlord. The tenant submits that as a result of the unauthorized increases they have been overpaying for this tenancy. The tenant testified that they chose not to pay the monthly rent for December 2019 and January 2020 as they believe there is a credit on their account. The tenant also said that the landlord has interfered with their subtenants whom they have allowed onto the property.

The tenant testified that they believe that the tenancy agreement submitted into documentary evidence has been falsified by the landlord and that there is no rent owing. The tenant gave evidence about the interference from the landlord and various complaints about their conduct.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In the present case I accept the evidence that monthly rent in the amount of \$2,870.00 is payable by the 1st of each month pursuant to the tenancy agreement. I accept the landlord's

evidence that the tenant failed to pay the full rent for December 2018 and they issued a 10 Day Notice dated December 18, 2019. I accept the evidence of the parties that the tenant did not pay the full amount owing within five days of receipt of the 10 Day Notice.

I find the tenant's evidence that there is a credit for their account and no rent owing to not be supported in the evidence or to have an air of reality. I find the tenant's evidence to generally be non credible as it consists of accusations, suppositions and conclusions not otherwise supported. I find that there is little evidence that the tenant overpaid rent or that the landlord did not increase the rent in accordance with the Act with proper written notice.

I accept the landlord's evidence that there was a rental arrear in the amount of \$2,870.00 when the 10 Day Notice was issued and that the tenant failed to pay the full rent due within the 5 days of service. Accordingly, I find that the tenancy ended on the effective date of the 10 Day Notice, December 18, 2019. Therefore I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the notice has passed I issue an Order enforceable 2 days after service.

As I have found the landlord is entitled to an Order of Possession on the basis of the 10 Day Notice for Unpaid rent I find it is unnecessary to make a finding on the 1 Month Notice.

I accept the evidence of the landlord that the arrear for this tenancy including unpaid rent and unpaid parking fees is \$5,890.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

As the landlord was successful in their application for an Order of Possession and Monetary Award the landlord is also entitled to recover the \$100.00 filing fee for the cost of that application. As I have made no finding on the landlord's application pertaining to the 1 Month Notice, I find they are not entitled to recover the filing fee for that application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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.

I issue a monetary Order in the landlord's favour for \$4,640.00 allowing the landlord to recover the rental arrear for this tenancy and retain the security deposit.

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 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: January 23, 2020

Residential Tenancy Branch