



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter originally proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession and a Monetary Order based on unpaid rent. On February 7, 2020, a decision was rendered ordering that the direct request proceeding be reconvened as a participatory hearing in accordance with section 74 of the *Act*. The matter was subsequently set to be heard before me on March 12, 2020, at 9:30 A.M. (Pacific Time).

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) served April 9, 2019;
- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) served January 2, 2020;
- A monetary order for unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the both Landlords and the Tenant, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlords testified that the Notice of Dispute Resolution Proceeding package, including a copy of the Application and the Notice of Hearing, as well as their documentary evidence, was personally served on the Tenant on February 8, 2020, at 9:00 P.M. The Tenant confirmed receipt at this date and time. The Tenant testified that their documentary evidence was personally served on the Landlords on approximately

February 16, 2020, or February 17, 2020, and the Landlords confirmed receipt on or about these dates.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

Matter #1

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Matter #2

Although the Landlord submitted a copy of a One Month Notice to End Tenancy for Cause (the “One Month Notice”) based on repeated late payment of rent, they originally applied for an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”) based on non-payment of rent and two 10 Day Notices. The Landlords did not submit an Amendment to the Application for Dispute Resolution seeking to amend their Application to include an Order of Possession based on a One Month Notice and submitting documentary evidence for review is not a substitute for amending the Application.

As a result, the hearing proceeded based only on the Landlords’ Application seeking and Order of Possession based on two 10 Day Notices, a Monetary Order for Unpaid Rent, and recovery of the filing fee. The Landlords remain at liberty to file an Application for Dispute Resolution in relation to the One Month Notice.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for the rental unit pursuant to section 55 of the *Act*?

Are the Landlords entitled to the recovery of unpaid rent?

Are the Landlords entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on December 15, 2012, that rent in the amount of \$850.00 is due on the first day of the month and that a \$400.00 security deposit was paid by the Tenant. In the hearing the parties agreed that these were the correct terms of the tenancy agreement. The parties also agreed that rent increased to \$900.00 effective March 1, 2018, and then further increased to \$950.00 on January 1, 2019, and that no notices of rent increase were served on the Tenant under the *Act* in relation to these rent increases. The parties stated that instead of notices of rent increase, discussions were had in relation to these rent increases.

The parties agreed that the Tenant had difficulty paying rent as required under the tenancy agreement and that between February 1, 2010 and June 30, 2018, the Tenant made only the following rent payments:

- \$5,000.00 paid on January 10, 2017;
- \$5,000.00 paid on June 3, 2017; and
- \$10,000.00 paid on May 28, 2018.

The Landlord stated that the Tenant still owes \$15,000.00 in outstanding rent for the following periods:

- \$4,350.00 for February 1, 2015 – December 31, 2015;
- \$5,200.00 for January 1, 2016 – December 31, 2016;
- \$200.00 for January 1, 2017 – December 31, 2017; and
- \$5,300.00 for January 1, 2018 – June 30, 2018.

The Tenant agreed that the above amounts are owed to the Landlords for unpaid rent for February 1, 2015 – December 1, 2013, and that no rent was paid for the period of January 1, 2018 – June 20, 2018. However, the parties agreed that rent was increased to \$900.00 on Mar 1, 2018, and then again to \$950.00 on January 1, 2019, without proper notice under the *Act*. Further to this, the Tenant argued that these amounts are in excess of the maximum allowable rent increases under the *Act* and regulation. The Tenant also argued that the matter of outstanding rent is no longer a Residential Tenancy Branch (the “Branch”) matter as they gave the Landlord a promissory note at which point this amount became a private debt, not outstanding rent under the *Act*.

The Landlords acknowledged receipt of several documents authored by the Tenant stating that rent is owed for certain periods of the tenancy, copies of which are in the documentary evidence before me; however, the Landlords stated that these notes do not change the fact that the amounts owed are for rent for a residential tenancy and therefore the Branch has jurisdiction regarding the amounts owed. In any event, the Landlords stated that the Tenant has not paid the remaining amounts owed and that any agreement made by the Tenant to pay these amounts has not been followed through with by the Tenant.

The parties were unsure if the Tenant paid rent for July of 2018, and as a result, the Landlord did not seek compensation for this month. The Parties agreed that the Tenant began paying rent each month starting August 1, 2018, and that the Tenant paid their rent in a satisfactory manner for some time before the payment of rent became an issue again.

The Landlords stated that a 10 Day Notice was served on the Tenant on April 9, 2019, and the Tenant confirmed receipt of both pages the same day. The Landlords stated that another 10 Day Notice was served on the Tenant on January 2, 2020, and although the Tenant confirmed receipt the same day, they stated that they only received one of the two pages. The Landlords denied serving only one page and stated both pages of the 10 Day Notice were served.

The first 10 Day Notice in the documentary evidence before me indicates that it was posted to the door of the rental unit on April 9, 2019, has an effective vacancy date of April 19, 2019, and states that as of December 2017/2018, the Tenant owed \$15,050.00 in outstanding rent. Although the 10 Day Notice is signed, there is no date for the signature. The second page of the 10 Day Notice has also not been submitted for my consideration.

The second 10 Day Notice in the documentary evidence before me indicates that it was posted to the door of the rental unit on January 2, 2020, has an effective vacancy date of April 19, 2019, and states that as of December 2017/2018, the Tenant owed \$15,050.00 in outstanding rent. Although the 10 Day Notice is signed, there is no date for the signature. The second page of the 10 Day Notice has also not been submitted for my consideration.

Analysis

Section 58 (1) of the *Act* states that except as restricted under this *Act*, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of rights, obligations and prohibitions under the *Act* or rights and obligations under the terms of a tenancy agreement that are required or prohibited under the *Act*, or relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities. Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The parties agreed that a tenancy under the *Act* exists, and that a substantial amount of rent due under the *Act* and the tenancy agreement remains unpaid as of the date of the hearing. As a result, and pursuant to section 58 (1) of the *Act*, I find the payment of rent is a matter over which I have jurisdiction, and I therefore dismiss the Tenant's argument that I lack jurisdiction on the basis that they have already promised to pay the Landlords the outstanding rent owed.

The parties were in agreement that as of the date of the hearing, the Tenant owes the following outstanding rent amounts:

- \$4,350.00 for February 1, 2015 – December 31, 2015;
- \$5,200.00 for January 1, 2016 – December 31, 2016; and
- \$200.00 for January 1, 2017 – December 31, 2017.

As a result, I find that the Landlords are entitled to \$9,750.00 in outstanding rent for the period of February 1, 2015 – December 31, 2017.

The Landlords also sought \$5,300.00 for January 2018 – June 30, 2018, and the Tenant agreed that no rent was paid for this period. However, the parties agreed that rent was increased by \$50.00 first on Mar 1, 2018, and then again on January 1, 2019, without proper notice under the *Act*, and the Tenant argued that the amounts of the rent increases were also in excess of the maximum allowable under the *Act* and regulation.

Section 41 of the *Act* states that a landlord must not increase rent except in accordance with this Part. Section 42 (2) and (3) of the *Act* say that a landlord must give a tenant

notice of a rent increase at least 3 months before the effective date of the increase and that the notice of a rent increase must be in the approved form. As the parties agreed that no notice of rent increases were given to the Tenant in accordance with section 42 of the *Act*, I therefore find that the above noted rent increases were in violation of the *Act* and pursuant to section 5 of the *Act*, they were therefore of no force or effect. As a result, I find that the Tenant's rent remained at \$850.00 a month and order that it shall remain as such until the Landlords comply with the *Act* in relation to the timing, form, and amount of the rent increase.

I therefore find that the Landlord's are only entitled to \$5,100.00 in outstanding rent for the period of January 1, 2018 – June 30, 2018; \$850.00 x 6 months. Pursuant to section 72 of the *Act*, I also grant the Landlords recovery of the \$100.00 filing fee. Based on the above, the Landlords are therefore entitled to a Monetary Order in the amount of \$14,950.00.

Having made the above findings, I will now turn my mind to the validity of the 10 day Notices. Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing, signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and when given by a landlord, be in the approved form. Neither of the 10 Day Notice's in the documentary evidence before me have dates for the signatures, and I therefore find that they are not properly dated in accordance with the *Act*. The effective date of the second 10 Day Notice is also almost a year prior to the date it was served, and as a result, I find that it does not contain a valid effective date under the *Act*. Further to this, the second page of either 10 Day Notice has not been submitted for my consideration, and as a result, I cannot be sure that both pages were served, or that any second pages served, were in the approved form.

As a result, I find that both 10 Day Notices are invalid as they do not comply with section 52 of the *Act*, and I therefore dismiss the Landlords' Application seeking an Order of Possession based on these 10 Day Notice's without leave to reapply. I therefore Order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

Conclusion

The Landlords' Application seeking an Order of Possession based on the 10 Day Notices is dismissed without leave to reapply.

I Order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$14,950.00. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlords remain at liberty to file an Application for Dispute Resolution in relation to the One Month Notice to End Tenancy for Cause (the "One Month Notice") submitted as evidence for this hearing but not considered in rendering my decision.

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: April 8, 2020

Residential Tenancy Branch