



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodsmere Holdings Corp. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU, MNDCL-S, MNRL-S, FFL

Introduction

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

- An Order of Possession for the rental unit based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed (utilities);
- Recovery of the filing fee; and
- Authorization to withhold the security deposit towards amounts owed.

The hearing was originally convened by telephone conference call on August 13, 2020, at 11:00 A.M. and was attended by an agent for the Landlord D.L. (the “Landlord’s Agent”) and agent for the Tenant V.K. (the “Tenant’s Agent”), both of whom provided affirmed testimony. During the original hearing I was satisfied that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the Landlord’s documentary evidence, was served on the Tenant by registered mail on July 14, 2020, as set out in the Interim Decision dated August 13, 2020. I was also satisfied that the Tenant was aware of the date and time of the hearing as they were able to request that their friend V.K. attend on their behalf. The original hearing was subsequently adjourned as V.K. testified that the Tenant was medically incapable of attending the hearing to represent themselves, and that the Tenant’s social worker was unable to attend the hearing due to unexpected circumstances beyond their control.

An interim decision was made on August 13, 2020, and the reconvened hearing was set for August 18, 2020, at 11:00 A.M. A copy of the Interim Decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”) by

email at 2:44 P.M. on August 13, 2020, as agreed upon during the original hearing, at the email addresses confirmed in the hearing. For the sake of brevity, I will not repeat here all the matters addressed in the Interim Decision, and as a result, it should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on August 18, 2020, at 11:00 A.M. and was again attended by D.L for the Landlord and V.K for the Tenant. The Agents for both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. All testimony provided was affirmed.

I have reviewed all evidence and testimony before me that met the requirements of the Residential tenancy Branch Rules of Procedure (the "Rules of Procedure. However, I refer only to the relevant facts, evidence, and issues in this decision.

Preliminary Matters

Preliminary Matter #1

During the hearing the Agent for the Landlord requested to withdraw the Landlord's claim for \$341.83 in outstanding utilities, as they did not have information regarding whether a demand letter for the payment of the utilities was served on the Tenant. There was no objection from the Tenant's Agent. As a result, I allowed this portion of the Landlord's claim to be withdrawn. The Landlord remains at liberty to reapply, should they wish to do so. This is not an extension of any statutory time limit.

Preliminary Matter #2

The original hearing was adjourned due to affirmed testimony from V.K., that the Tenant was medically incapable of attending the hearing to represent themselves, and that the Tenant's social worker was unable to attend the original hearing due to unexpected circumstances beyond their control. In the hearing and in the Interim Decision I ordered that the Tenant or their agent(s) submit to the Branch and serve on the Landlord before the date and time of the reconvened hearing, medical documentation substantiating that the Tenant is medically incapable of representing themselves at the hearing and proof that the Social Worker experienced an unanticipated emergency which prevented their attendance on the Tenant's behalf at the originally scheduled hearing.

At 10:48 A.M. on August 18, 2020, the Residential Tenancy Branch (the “Branch”) received an email from the Tenant containing one attachment, a picture of a car windshield. The subject line of the email was “Re: ADJOURNED HEARING - RTB FILE [the file number for this matter]”. A duplicate of this email was received by the Branch again at 10:53 A.M. At 10:54 A.M. on August 18, 2020, the Branch received another email with the subject line “Response [given name for the Landlord’s Agent] and Judge [given name of a Branch employee].” A medical note was attached to this email. I was not notified of these emails until 11:15 A.M., well after the commencement of the hearing, at which time the email containing the medical note was forwarded to me. The other emails were forwarded to me at 12:05 P.M. and 12:07 P.M. Although the Agent for the Landlord acknowledged receiving the email with the subject line “Response [given name for the Landlord’s Agent] and Judge [given name of a Branch employee].” at some point during the hearing, they denied receiving the attachment, or the email containing the medical note.

In the Interim Decision dated August 13, 2020, I ordered that this evidence be served on the Landlord or their agents by email or in person and that it be submitted to the Branch online using the Dispute Access Site, in-person at a Service BC location or in-person at the Branch prior to the date and time of the reconvened hearing, 11:00 A.M. on August 18, 2020. Information on how to submit documents for my consideration online through the Dispute Access Site were provided to the Tenant’s Agent at the original hearing and I note that they are also contained in both the original Notice of Hearing and the Notice of Hearing for the reconvened hearing date.

Section 75 of the *Act* states that rules of evidence do not apply and that I may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that I consider to be necessary and appropriate, and relevant to the dispute resolution proceeding. Although the Tenant did not serve this medical note on the Landlord as directed in the Interim Decision, and did not submit it to the Branch in one of the manners set out in the Interim Decision, it was received by the Branch prior to the commencement of the reconvened hearing and given its relevance to the Tenant’s ability to respond to the Application and attend the hearing, I find it necessary and appropriate to accept this email and the attached medical note for consideration.

In the medical note dated August 7, 2020, a medical Doctor stated that the Tenant is recovering from a serious medical condition and is unable to attend the scheduled court date on August 13, 2020. In the note the Doctor also requested that the hearing be postponed at least one month, pending the Tenant’s recovery.

I appreciate and accept that the Tenant is recovering from a serious medical condition and was therefore unable to attend the originally scheduled hearing themselves. Although the note specifically references the August 13, 2020, hearing date, as the reconvened hearing was scheduled for only 5 days later, I find it reasonable to conclude the Tenant was also medically unable to attend the reconvened hearing on August 18, 2020.

While the Doctor requested that the hearing be postponed for at least one month, I do not find that this is either necessary or appropriate under the circumstances. Rule 6.7 of the Rules of Procedure allows a party to a dispute resolution hearing to be represented by an agent or a lawyer and to be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make their presentation. Although the Tenant was medically unable to attend either hearing themselves, they were still able to arrange for V.K. to attend on their behalf, which they did. Further to this, as stated above, several emails were received by the Branch from the Tenant in relation to the reconvened hearing, and having thoroughly reviewed these emails, they appear well thought out, well written, and coherent. In reading them I am left with the impression that the Tenant understands the circumstances which gave rise to the Landlord's Application and that they are fully capable of submitting written documentary evidence for my consideration in the hearing, which is what they have done. Further to this, the matters at hand are relatively straight forward, as they relate to an uncontested 10 Day Notice and whether rent was paid and I find it reasonable to conclude given my findings above, that the Tenant was capable of providing necessary and relevant evidence to the Branch in writing and to their Agent in relation to the matters to be decided as a result of the hearing.

Based on the above, the reconvened hearing proceeded as scheduled, as I find that the Tenant had sufficient time and ability to submit written and other documentary evidence for my consideration, and to arrange for an agent to attend the hearing on their behalf.

I have also accepted the additional email from the Tenant and its attachment for consideration in this matter pursuant to section 75 of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on an undisputed 10 Day Notice?

Is the Landlord entitled to recovery of unpaid rent and utilities?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit towards any amounts owed?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy commenced on December 1, 2019, and is set to become month to month after the end of the fixed term on November 30, 2020. The tenancy agreement states that rent in the amount of \$2,100.00 is due on the first day of the month and that heat, electricity, cable, internet, and natural gas, among other things, are not included in rent. Although the tenancy agreement states that a \$1,050.00 security deposit was to be paid, the Agent for the Landlord stated that only \$1,000.00 was paid towards the security deposit on November 28, 2019. This payment is also reflected in the tenancy agreement. The Tenant's Agent did not dispute the above noted terms of the tenancy agreement.

The Landlord's Agent stated that when the Tenant failed to pay rent as required by the tenancy agreement, a 10 Day Notice was posted to the door of the rental unit on March 3, 2020, by another agent for the Landlord. A witnessed and signed proof of service document was submitted in support of this testimony. The 10 Day Notice in the documentary evidence before me is signed and dated March 3, 2020, has an effective date of March 13, 2020, and states that \$850.00 in outstanding rent was due as of March 1, 2020. A rent ledger was submitted by the Landlord in support of the 10 Day Notice.

The Landlord's Agent stated that no rent payments were made by the Tenant until May 18, 2020, when they paid \$2,500.00 and May 28, 2020, when they paid \$2,550.00. The Landlord's Agent stated that no further rent payments have been made, and as a result, the Tenant currently owes \$6,300.00 in outstanding rent. The Agent argued that as the Tenant did not pay the outstanding rent listed on the 10 Day Notice or file an Application for Dispute Resolution seeking cancellation of the 10 Day Notice within the allowable

timeframe as set out under section 46 (4) of the Act, the Landlord is therefore entitled to an Order of Possession for the rental unit. Given the amount of outstanding rent owed, the Landlord's Agent requested an Order of Possession as soon as possible.

The Landlord's Agent also sought recovery of the filing fee and authorization to withhold the Tenant's \$1,000.00 security deposit in partial repayment of the amounts owed.

Although the Agent for the Tenant largely did not have any information regarding the tenancy, service or receipt of the 10 Day Notice, or whether the Tenant filed an Application for Dispute Resolution seeking cancellation of the 10 Day Notice, they agreed that rent was owed and that the amount of outstanding rent sought by the Landlord sounded accurate.

Analysis

As there is no evidence to the contrary, I accept that the 10 Day Notice was posted to the door of the Tenant's rental unit on March 3, 2020, and therefore deem it received by the Tenant on March 6, 2020, in accordance with section 90 (c) of the Act.

As there was no dispute about the terms of the tenancy agreement, I accept that they are as set out in the tenancy agreement in the documentary evidence before me and therefore find that rent in the amount of \$2,100.00 is due on the first day of each month. I accept the Agent for the Landlord's testimony that since the 10 Day Notice was served, only two rent payments have been made as follows:

- \$2,500.00 on May 18, 2020; and
- \$2550.00 on May 28, 2020.

I also accept as fact that the Tenant currently owes \$6,300.00 in outstanding rent, as there is no documentary evidence or testimony before me to the contrary. Having made these findings, I will now turn my mind to the validity of the 10 Day Notice.

Section 46 (4) of the Act states that within 5 days after receiving a notice to end tenancy for unpaid rent or utilities, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

Section 46 (5) of the Act states that 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 is conclusively presumed to have accepted

that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

There is no evidence before me that the Tenant either disputed the 10 Day Notice or paid the rent owed as stated in the 10 Day Notice within the prescribed period set out under section 46 (4) of the *Act*. Although the Tenant's Agent stated that the Tenant was hospitalized from mid-April to May 21, 2020, as this period is well after the expiration of the legislative timeframe for paying the rent owed in the 10 Day Notice or for filing an Application for Dispute Resolution disputing the validity of the 10 Day Notice, I find that this hospitalization had no impact on the Tenant's ability to comply with the requirements set out under section 46 (4) of the *Act*. As a result, I find that the Tenant was conclusively presumed to have accepted that the tenancy was ending in accordance with the 10 Day Notice.

As the effective date for the end of the tenancy listed on the 10 Day Notice does not comply with the minimum time period set out under section 46 (1) of the *Act*, I therefore find that it is automatically corrected to the earliest date which does, March 16, 2020, pursuant to section 53 of the *Act*. I find that the Tenant was therefore required to vacate the rental unit by the corrected effective date of March 16, 2020, and has been overholding the rental unit since that date.

Pursuant to section 55 (2) (b) of the *Act*, the Landlord is therefore entitled to an Order of Possession for the rental unit. In the hearing the Agent for the Landlord requested possession of the rental unit as soon as possible, as no rent has been paid since May 28, 2020, and \$6,300.00 in rent remains outstanding. Based on the above, and as the effective date of the 10 Day Notice lapsed 5 months prior to the hearing, I therefore grant the Landlord an Order of Possession effective **two (2) days after service** on the Tenant.

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 (1) of the *Act*. As per the request from the Agent for the Landlord and pursuant to section 72 (2) (b) of the *Act*, the Landlord is entitled to retain the Tenant's \$1,000.00 security deposit towards the outstanding rent owe. Pursuant to sections 67, the Landlord is entitled to a Monetary Order in the amount of \$5,400.00; \$6,300.00 in outstanding rent owed, plus \$100.00 for recovery of the filing fee, less the \$1,000.00 security deposit retained by the Landlord.

Conclusion

Pursuant to section 55 (2) (b) of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. The Landlord is 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.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$5,400.00**. The Landlord is 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.

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: August 19, 2020

Residential Tenancy Branch