



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL OAK MANOR APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

On July 20, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 10 Day Notice to End Tenancy, dated July 16, 2020 (the “10 Day Notice”). The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matter

The Tenant testified that he sent the Landlord an evidence package and the Landlord acknowledged receiving same. The Landlord testified that he taped an evidence package to the door of the rental unit and took a picture of it on August 15, 2020. The Tenant responded that he didn’t receive the package and that he was out of town on the 15th.

The Landlord, who lives in the residential property, stated that he saw the Tenant around the building on August 15, 2020; however, the Tenant still denied seeing or receiving the evidence package. I find that the Landlord served his evidence package to the Tenant in accordance with section 88 of the Act and find that the Landlord’s evidence is admissible.

Regardless of the finding, I asked the Tenant if he would like to proceed with the hearing with the admission of the Landlord’s evidence and the Tenant confirmed that he would like to proceed, but agreed that he would argue the admission of any individual piece of the Landlord’s evidence if he felt it was not valid.

Issues to be Decided

Should the 10 Day Notice be cancelled, in accordance with Section 46 of the Act?

If the 10 Day Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on June 1, 2018 and continued as a month-to-month tenancy. The rent is 1,050.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$525.00 and a pet damage deposit in the amount of \$275.00.

The Landlord stated that the Tenants have a long history of late and non-payments of rent. The Landlord provided copies of previous notices to end tenancy for unpaid rent and for repeatedly late rent to demonstrate the pattern of the Tenants. The Landlord testified that the Tenants have not paid a full month's rent since December 2019.

As an example, the Landlord submitted a copy of a previous 10-Day Notice to End Tenancy for Unpaid Rent that he testified serving to the Tenants on January 2, 2020. Although the notice indicated an outstanding rent of \$3,425.00, the Landlord acknowledged that the amount should have stated \$3,725.00. The Landlord followed up with the Tenant in March 2020 about ending the tenancy for the unpaid rent; however, stated the COVID-19 regulations interfered with an application for an Order of Possession.

The Landlord submitted a ledger spanning the dates from January 2019 to September 2020. The Landlord reviewed the ledger and pointed out that as of February 2020, pre-COVID-19, the Tenants were in arrears for a total of \$5,825.00 in unpaid rent. The Landlord also submitted copies of the receipts for the Tenants' cash payments of rent.

The Landlord testified that he served the most recent 10 Day Notice to End Tenancy, dated July 16, 2020, by taping it to the Tenants' door on July 16, 2020. The 10 Day Notice indicated that the Tenants failed to pay rent in the total amount of \$11,050.00, which was due on July 1, 2020. The move-out date on the 10 Day Notice was July 25, 2020.

In response to the Tenant stating that he didn't receive previous notices to end tenancies or subsequent letters from the Landlord about the tenancy, the Landlord stated that he securely taped any correspondence to the Tenants' door and that the residential property is secure, with hallways only accessible by elevator, and not open to the public.

The Landlord stated the Tenants have not paid their August 2020 rent and the outstanding rent is now \$12,100.00. The Landlord requested an Order of Possession if the 10 Day Notice is upheld.

The Tenant submitted a letter and testified that the outstanding amount of unpaid rent that the Landlord is claiming doesn't make sense and if the amount is correct, why hadn't the Tenants been given notice to end the tenancy 10 months ago.

The Tenant submitted that the Landlord would not issue receipts when the Tenants paid their rent in cash and that the Tenants hadn't been concerned about this as no notices to end tenancy for unpaid rent were ever previously issued.

The Tenant submitted his bank account statements and stated that it demonstrated that he withdrew \$1000.00 on a regular/monthly basis in preparation for paying rent. The Tenant acknowledged that he made four \$1000.00 withdrawals from his account in June 2020, but "can't remember" if any of that money went to rent.

During the hearing, the Tenant testified that he has been paying the rent all along but did not receive any rent receipts from the Landlord.

During the hearing, the Tenant acknowledged that he didn't pay the rent for August 2020.

Later in the hearing, the Tenant acknowledged that he did receive a few receipts for cash rent payments from the Landlord but did not submit them as evidence.

Later in the hearing, the Tenant acknowledged that he did receive a previous notice to end tenancy for unpaid rent sometime last year.

The Tenant stated that he was currently looking for another rental unit but has not found one yet.

Analysis

Note: The COVID-19 Regulations defined a specified period from March 18, 2020 to August 17, 2020 where evictions were banned for the non-payment of rent during these dates. My analysis and subsequent findings, as a result of reviewing the testimony and evidence presented during this Dispute Resolution hearing, will only focus on any allegations of unpaid rent prior to March 18, 2020.

Section 46(1) of the Act states that a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the Notice. In this case, the Landlord provided an effective (move-out) date of July 25, 2020 on the 10 Day Notice. As a result of the Tenant stating that he received the 10 Day Notice on July 17, 2020, I find that the effective date of the 10 Day Notice is July 27, 2020, pursuant to section 53 of the Act.

Where a Tenant applies to dispute a 10 Day Notice to End Tenancy, the onus is on the Landlord to prove, on a balance of probabilities, the reasons on which the Notice is based.

In this case, I considered the records submitted by the Landlord that included correspondence with the Tenants, a tenancy ledger and notices to end tenancy, to provide a documented history of the Tenants' failure to pay their monthly rent.

I accept that the Tenant disagreed with much of the Landlord's testimony. When reviewing the Tenant's testimony and evidence, I noted that there were inconsistencies in regard to the Tenant stating that he had not received receipts for rent, not received a notice to end tenancy prior to July 2020, and that the Tenants had consistently paid rent throughout the tenancy.

After reviewing the testimony and evidence of all parties, I find that the Landlord has met the onus and provided sufficient evidence to demonstrate that the Tenants have failed to pay rent from December 2019 to February 2020, in accordance with their Tenancy Agreement. As a result, I dismiss the Tenants' application to cancel the 10 Day Notice.

Now that I have found that the 10 Day Notice is valid, I also will consider if the Notice complies with Section 52 of the Act, and if it does, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. Upon review, I find that the 10 Day Notice is compliant with section 52 of the Act.

I have dismissed the Tenant's Application and found that the 10 Day Notice to End Tenancy for Unpaid Rent, dated July 16, 2020, is compliant with the Act. For these reasons and because the Tenants are still occupying the rental unit, I grant the Landlord an Order of Possession.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 26, 2020

Residential Tenancy Branch