



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlords:** OPRM-DR, OPR-DR-PP, FFL
Tenant: CNR, AS, DRI

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlords sought:

- an Order of Possession for unpaid rent (with repayment plan) pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- an order regarding the tenant's dispute of a rent increase by the landlord that is above the amount allowed, pursuant to section 43.

Landlord D.N., Landlord K.N. and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to cross examine one another and to make submissions. Landlord D.N. (the landlord) stated that they would be the primary speaker for the landlords during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged that they received a copy of the Landlord's Application for Dispute Resolution (Landlord's Application) while the landlord acknowledged receiving a copy of the Tenant's Application for Dispute Resolution (Tenant's Application). Pursuant

to section 89 of the *Act*, I find that both parties are found to have been duly served with each other's applications.

The tenant acknowledged receipt of the landlords' evidence, which was served with the Landlord's Application. In accordance with section 88 of the *Act*, I find that the tenant is duly served with the landlords' evidence.

The tenant stated that they served their evidence to the landlord by e-mail on October 11, 2020, and then clarified that they had actually submitted it on-line to the Residential Tenancy Branch(RTB) on that date and was of the understanding that the landlords could access the evidence from the RTB site.

The landlord testified that they did not receive the tenant's evidence.

Preliminary Matters

Rule 3.3 of the RTB Rules of Procedure (the *Rules*) states that documentary evidence intended to be relied on at the hearing for a cross application must be received by the other party not less than 14 days before the hearing. For a hearing on October 16, 2020, the evidence would have to be provided to the respondent by October 01, 2020.

Section 88 of the *Act* allows for service by either in-person, posting on the party's door, leaving a copy in the mailbox and by ordinary or registered mail.

I find that the tenant did not serve the landlords with their evidence in accordance with Rule 3.3 of the *Rules* or section 88 of the *Act*. I find that the landlords may be prejudiced by the lack of service as they did not have a chance to respond to the tenant's evidence and for this reason the tenant's evidence is not accepted for consideration.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to an order allowing the tenant to assign or sublet because the landlords' permission has been unreasonably withheld?

Is the tenant entitled to an order regarding a rent increase by the landlord that is above the amount allowed?

Background and Evidence

The landlords provided a copy of the tenancy agreement and addendum which sets out that the tenancy began on August 01, 2018, with a monthly rent of \$3,150.00 due on the first day of each month. The landlords and the tenant agreed that the landlords currently retain a security and pet deposit in the amount of \$1,750.00.

The addendum sets out that the tenant has permission to have two dogs on the residential property. The addendum also sets out the tenant has permission to sublet two other separate dwelling units located on the residential property dependent on the condition that the landlords are provided with the names of the occupants in the sublet dwelling units.

The landlord also provided in documentary evidence:

- A copy of a Notice of Rent Increase form showing the rent being increased from \$3,150.00 to the current monthly rent amount of \$3,228.75 effective as of November 01, 2019;
- A copy of the signed 10 Day Notice dated September 04, 2020, for \$3,228.75 in unpaid rent with a stated effective vacancy date of September 15, 2020;
- A copy of a Proof of Service document which indicates that the 10 Day Notice was sent by registered mail to the tenant on September 04, 2020. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end;
- A copy of a Direct Request Worksheet which shows that \$2,000.00 of the \$3,228.75 identified as owing in the 10 Day Notice was paid on September 01, 2020; and
- A copy of a Notice of Rent Increase form showing the rent being increased from the current monthly rent amount of \$3,228.75, to a new monthly rent amount of \$3,312.70 effective as of January 01, 2021.

The landlord testified that the tenant paid \$2,000.00 towards the monthly rent for September 2020 on September 02, 2020 and the remaining \$1,228.75 on September 16, 2020. The landlord submitted that the second payment, on September 16, 2020, was received after more than the five days allowed by the Act upon the tenant receiving the 10 Day Notice. The landlord stated that they are seeking to end the tenancy and requested an order of possession for the rental unit.

The tenant confirmed that the monthly rent for September 2020 was not paid in full until September 16, 2020. The tenant submitted that they only received the 10 Day Notice on September 11, 2020. The tenant stated that the reason the monthly rent was late was due to having not been paid by one of the tenant's sublets on the residential property.

The tenant testified that they have been trying to catch up on outstanding rent that is owing from previous months and had made payments toward that end in August 2020. The tenant testified that they had never been late with the monthly rent up until April 2020. The tenant stated that he felt that the landlords have wanted to end the tenancy for a long time and used pressure tactics against the tenant. The tenant submitted that the landlords had refused permission to sublet the rental unit in the past. The tenant testified that the landlords have attempted to illegally increase the rent higher than the maximum amount allowed.

Analysis

Having reviewed the above, I find that the tenant was deemed served with the 10 Day Notice on September 09, 2020, five days after its' registered mailing pursuant to sections 88 and 90 of the *Act*.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found that the 10 Day Notice was deemed served to the tenant on September 09, 2020, I find that the tenant had until September 14, 2020, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Having reviewed the evidence and affirmed testimony, I find that the tenant submitted the Tenant's Application on September 14, 2020, within the five day time limit permitted under section 46 (4) the Act; however, based on the landlord and tenant's testimony, I find that the monthly rent was not paid until September 16, 2020, which is more than the

five days allowed by section 46 (4) of the Act. I find that the tenant did not provide any evidence that they were entitled to withhold the monthly rent in accordance with the Act.

For the above reasons, I dismiss the Tenant's Application to cancel the landlords' 10 Day Notice, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the 10 Day Notice complies with section 52 of the Act. For these reasons, I grant a two-day Order of Possession to the landlords.

As the landlord confirmed that the tenant paid the monthly rent for September 2020, the Landlord's Application for a monetary award for September 2020 rent is dismissed, without leave to reapply.

Regarding the tenant's application to sublet the rental unit, as I have found that the tenancy has ended, I find that this claim is no longer applicable. I further find that it is undisputed that the tenant is subletting other dwelling units on the residential property as the tenant confirmed in their testimony and as was set out in the addendum. For these reasons the tenant's application for permission, that has been unreasonably withheld, to assign or sublet the rental unit is dismissed, without leave to reapply.

Regarding the tenant's dispute of an additional rent increase, I find that the maximum allowable rent increase allowed for 2019 was 2.5%, which is the same rate that the landlords had increased the rent by. ($\$3,150.00 \times 2.5\% = \$3,228.75$). As this tenancy has ended, I find that tenant's dispute of a future rent increase is no longer applicable.

For the above reasons I dismiss the tenant's application to dispute the landlord's rent increase that is above the amount allowed, without leave to reapply.

I do note that the landlord's rent increase that was to be effective as of January 1, 2021 is for 2.6%, which is more than the allowable rent increase for 2021 set at 1.4%.

As the landlord was successful in obtaining an Order of Possession for the rental unit, I allow their request to recover the filing fee from the tenant.

In accordance with section 72(2) (b), the landlord may deduct the filing fee from the security deposit they currently retain in the amount of \$100.00. I find that the security and pet damage deposit is now reduced to \$1,650.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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.

Pursuant to section 72 of the *Act*, the landlords may deduct the amount of \$100.00 from the security deposit, which allows the landlords to recover the filing fee for this application from the tenant.

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: October 21, 2020

Residential Tenancy Branch