



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0776197 B.C. Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, LRE
OPRM-DR, OPR-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant B.S. (the Tenant's Application) under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An extension to the time limit for disputing the 10 Day Notice; and
- An order restricting or setting conditions on the Landlord's right to enter the rental unit.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

This hearing dealt with a Cross-Application for Dispute Resolution filed by the Landlord (the Landlord's Application) under the Act (the Act), seeking:

- An Order of Possession based on the 10 Day Notice;
- Outstanding rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the owner of the company named as the landlord in the tenancy agreement (the Owner) and Legal Counsel for the Owner/Landlord, both of whom provided affirmed testimony. The Owner and their Legal Counsel were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that respondents must be served with a copy of the Application and Notice of Hearing. As neither of the Tenants nor an agent acting on their behalf attended the hearing, I confirmed service of these documents as explained below.

Legal Counsel and the Owner testified that a package for each Tenant was posted to the door of the rental unit by the Owner, in the presence of a witness, on October 9, 2020, and that each package contained the Landlord's Documentary evidence, the Notice of Dispute Resolution Proceeding Package, a copy of the Landlord's Application and the Notice of Hearing. A witnessed and signed proof of service document was submitted for my review and consideration in support of this testimony. Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied that the aforementioned documents were posted to the door of the rental unit on October 9, 2020. As a result, I find that the Tenants were each deemed served with these documents three days later, on October 12, 2020, pursuant to section 90(c) of the Act.

Further to this, as the Tenant B.S. filed their Application and received a hearing date first, and the hearing of the Landlord's Application was set to be heard at the time of the Tenant's hearing, I find that at least the Tenant B.S., if not both Tenants, should have also been aware of the date and time of the hearing as a result of the Tenant's Application.

Based on the above, and pursuant to rule 7.3 of the Rules of Procedure, the hearing of the Landlord's Application therefore proceeded as scheduled despite the absence of the Tenants or an agent acting on their behalf, and the Tenant's Application was dismissed, in its entirety, without leave to reapply.

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

At the request of the Owner and their Legal Counsel, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Landlord's Application

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that the Landlord named in the tenancy agreement, which is a numbered corporation, contained different punctuation than the Landlord named in the Landlord's Application. Both the Owner and Legal Counsel for the Landlord stated that the Landlord's Application contains the correct spelling of the Landlord's legal name. Based on the affirmed and uncontested testimony from the Owner and Legal Counsel for the Landlord, I am satisfied that a spelling error exists in the name of the Landlord as stated on the first page of the tenancy agreement. As a result, I have relied on the Landlord's Application for the correct spelling of the Landlord's name.

Although the Tenant B.S. personally named the owner of the numbered corporation listed as the Landlord on the tenancy agreement as the respondent, as the numbered corporation is listed as the landlord on the tenancy agreement, not the owner of this corporation, I find that it is therefore improper to personally name the owner of the numbered corporation as the respondent to the Tenant's Application. As a result, I have amended the Tenant's Application to properly name the numbered corporation listed as the landlord on the tenancy agreement as the respondent to the Tenant's Application. Throughout this decision I have therefore referred to the numbered corporation as the Landlord and the owner of this numbered corporation as the Owner.

Preliminary Matter #2

Although both tenants listed in the tenancy agreement are named as respondents in the Landlord's Application, only the tenant B.S. is named as an applicant in the Tenant's Application. For the purpose of the Tenant's Application, I therefore consider only the tenant B.S. as the applicant and only B.S. will be named in any orders granted on behalf of the Tenant's Application. For the purpose of the Landlord's Application, both the tenant B.S. and the tenant Z.S. are considered respondents. As a result, I will name both B.S. and Z.S as tenants in any orders granted on behalf of the Landlord's Application.

Preliminary Matter #3

Legal Counsel for the Landlord and the Owner stated that since the Application was filed the amount of outstanding rent has increased as no rent has been paid for October

or November. As a result, they sought to amend the Application at the hearing to include recovery of the additional rent now owed. Legal Counsel for the Landlord and the Owner also sought to amend the Application to include the recovery of \$9,400.00 in outstanding affected rent due prior to September 2, 2020, if the tenancy was ended as a result of the 10 Day Notice as only rent due on September 2, 2020, was listed on the 10 Day Notice.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, the Application may be amended at the hearing. As the Tenants did not appear at the hearing to raise any objections regarding the above noted amendment request and as I find it reasonable that the Tenants should have anticipated that the Landlord might seek recovery of all outstanding rent owed, not simply the one month rent owed according to the 10 Day Notice, I therefore amend the Landlord's Application pursuant to rule 4.2 of the Rules of Procedure to include all outstanding rent currently owed in the amount of \$16,000.00, including affected rent due for April 2020 – August 2020.

Issue(s) to be Decided

Is the Tenant B.S. entitled to more time to have filed their Application seeking to dispute the 10 Day Notice?

Is the Tenant B.S. entitled to cancellation of the 10 Day Notice?

Is the Tenant B.S. entitled to an order restricting or setting conditions on the Landlord's right to enter the rental unit?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on February 2, 2020, states that the one year fixed term tenancy commenced on February 2, 2020, and is set to end on January 2, 2021, after which time, the tenancy will become month to month. The tenancy agreement states that rent in the amount of

\$2,200.00 is due on the second day of each month and that security and pet damage deposits were both to be paid in the amount of \$1,100.00 each. During the hearing Legal Counsel for the Landlord and the Owner confirmed that these are the correct terms for the tenancy agreement and that \$2,200.00 in deposits are still held in trust by the Landlord.

Legal Counsel for the Landlord and the Owner stated that when \$2,200.00 in rent was not paid as required on September 2, 2020, a 10 Day Notice for each tenant was posted to the door of the rental unit on September 3, 2020. Photographs of these notices to end tenancy posted to the door of the rental unit were submitted for my consideration in support of this testimony.

The 10 Day Notice's, which are signed and dated September 2, 2020, have an effective date of September 16, 2020, and state that the reason for the issuance of the notices is because \$2,200.00 in rent was not paid as required on September 2, 2020.

The Owner and Legal Counsel for the Landlord stated that no rent has been paid since the 10 Day Notice's were served and that the Tenants have no valid right under the Act to withhold the rent. Further to this, they stated that \$4,400.00 in additional rent is now owed for October and November of 2020, and that \$9,400.00 in affected rent is also owed (\$600.00 for April and \$2,200.00 per month for May-August). The Owner and Legal Counsel for the Landlord stated that the previously owed affected rent was not included on the 10 day Notices as there are currently different requirements for the issuance of notices to end tenancy in relation to affected rent. However, as stated in the preliminary matters section of this decision, the Owner and Legal Counsel for the Landlord sought to recover the unpaid effective rent if the tenancy is ended as a result of the 10 Day Notices as they argued that the requirements for repayment plans relate only to continuing tenancies and the issuance of notices to end tenancy for unpaid effective rent and therefore do not apply when a tenancy has ended.

As a result, the Owner and Legal Counsel for the Landlord sought an Order of Possession for the rental unit as soon as possible and recovery of \$16,000.00 in unpaid rent. They also sought recovery of the \$100.00 filing fee and authorization to withhold the \$2,200.00 in deposits towards the amounts owed.

Neither the Tenants nor an agent acting on their behalf appeared at the hearing to provide any evidence or testimony for my consideration either in support of the Tenant's Application or in response to the Landlord's Application, despite my finding earlier in this decision that both Tenants were deemed served with proper notice of the hearing, a

copy of the Application, and a copy of the documentary evidence before me from the Landlord as required by the Act and the rules of Procedure on October 12, 2020.

Analysis

Although several documents were submitted along with the Tenant's Application, no one appeared at the hearing on behalf of the Tenant B.S. (the Applicant) to present this evidence for my consideration. Pursuant to rule 7.4 of the Rules of Procedure, I therefore exercise my discretion not to consider this documentary evidence in rendering this decision.

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.

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 the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice and the notice to end tenancy complies with section 52 of the Act.

Based on the uncontested documentary evidence and affirmed testimony before me for consideration from the Owner and Legal Counsel for the Landlord, I am satisfied that rent in the amount of \$2,200.00 is due on the second day of each month, and that each of the Tenants was deemed served with a copy of the 10 Day Notice in accordance with Section 90(c) of the Act on September 6, 2020, three days after they were posted to the door of the rental unit.

Although the Tenant B.S. filed an Application seeking to dispute the 10 Day Notice, neither they, the other Tenant of the rental unit Z.S., nor an agent acting on their behalf, attended the hearing to provide any evidence or testimony for my consideration with regards to the validity of the 10 Day Notice or reasons for the withholding of rent. As a result, I am satisfied based on the uncontested documentary evidence and affirmed testimony before me for consideration on behalf of the Landlord that the Tenants had no right under the Act to withhold the \$2,200.00 in rent due on September 2, 2020. As there is no evidence before me that the Tenants paid this rent within 5 days of being deemed served with the 10 Day Notices, and I am satisfied that the 10 Day Notices in the documentary evidence before me comply with section 52 of the Act, I therefore

uphold the 10 Day Notices and find that the Landlord is entitled to an Order of Possession for the rental unit pursuant to section 55(1) of the Act.

As the effective date of the 10 Day Notices, September 16, 2020, has passed, I therefore grant an Order of Possession to the Landlord effective two days after service on the Tenants.

Based on the uncontested documentary evidence and affirmed testimony before me for consideration from the Owner and Legal Counsel for the Landlord, I am also satisfied that the Tenants owe \$16,000.00 in outstanding rent as follows:

- \$600.00 for April 2020
- \$2,200.00 per month for May 2020 – November 2020

Although rent owed for April 2020 – August 2020 meets the definition of affected rent under the COVID-19 (RESIDENTIAL TENANCY ACT AND MANUFACTURED HOME PARK TENANCY ACT) (NO. 2) REGULATION, I agree that no repayment plan is required pursuant to Residential tenancy Policy Guideline #52, as I have found that the tenancy is ended as a result of the 10 Day Notice relating to unaffected September 2020 rent. As a result, I find that the Landlord is entitled to recovery of the full \$16,000.00 in rent currently owed, including any amounts that qualify as affected rent. Pursuant to section 72 of the Act, I also grant the Landlord recovery of the \$100.00 filing fee and authorization to withhold the \$1,100.00 security deposit and the \$1,100.00 pet damage deposit towards the outstanding rent owed.

Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary Order in the amount of \$13,900.00 (\$16,000.00 in outstanding rent, plus \$100.00 for recovery of the filing fee, less the \$2,200.00 in deposits retained by the Landlord) and I Order the Tenants to pay this amount to the Landlord.

Conclusion

The Tenant's Application is dismissed, in its entirety, without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 **\$13,900.00**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 Tenants are cautioned that costs of any enforcement set out above for either the Order of Possession or the Monetary Order are recoverable from them by the Landlord.

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: November 2, 2020

Residential Tenancy Branch