



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER LUXURY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR / OPR-DR, OPRM-DR, FFL

Introduction

On September 11, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for Unpaid Rent, dated September 9, 2020 (the “10-Day Notice”).

On September 25, 2020, the Landlord submitted an Application for Dispute Resolution under the Act. The Landlord requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s Application was crossed with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

The Landlord’s representatives and the 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. The parties testified that they exchanged the documentary evidence that I have before me.

Issue to be Decided

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

Should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on April 15, 2019 and continued as a month-to-month tenancy. The rent is \$5,200.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$2,600.00.

The Landlord provided undisputed testimony that the Tenant failed to pay the rent in full for September 2020. The Landlord served the 10-Day Notice to the Tenant via registered mail on September 9, 2020. The 10-Day Notice included the move-out date of September 19, 2020.

The Landlord acknowledged that the amount that the Tenant failed to pay for September 2020 rent was incorrect on the 10-Day Notice. Although the amount indicated was \$2,200.00, the Landlord clarified that the Tenant had failed to pay the balance of \$1,400.00 for the September 2020 rent. The Landlord stated that the Tenant still has not paid the \$1,400.00.

The Landlord testified that the Tenant has paid the monthly rent for October and November 2020, however, has not included the installment payments included in the Repayment Plan for outstanding rent from March 18, 2020 to August 17, 2020. The Landlord stated they received the rent for October and November 2020 for use and occupancy only.

The Landlord requests an Order of Possession for the rental unit with a move-out date of November 30, 2020. The Landlord also requested a Monetary Order for the outstanding September 2020 rent, in the amount of \$1,400.00.

The Tenant stated that he received the 10-Day Notice and noted that the Landlord had indicated the incorrect amount owing. The Tenant disputed the 10-Day Notice based on the incorrect amount. The Tenant acknowledged that he has not paid the Landlord the outstanding balance of \$1,400.00 for September 2020 rent.

The Tenant stated that he did not pay the installment payments as noted in the Repayment Plan. However, the Tenant did say that he would pay the outstanding September 2020 rent and the outstanding installments if his tenancy were to continue.

Analysis

Section 46 of the Act authorizes a landlord to 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. The tenant, within 5

days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

Based on the Landlord's undisputed testimony and evidence, I find that the Tenant was required to pay rent in the amount of \$5,200.00 by the first day of each month.

I find the Landlord served the 10-Day Notice to the Tenant on September 9, 2020, pursuant to Section 88 of the Act, and deem the Tenant served on September 14, 2020. As a result, and pursuant to section 53 of the Act, I find the corrected effective date (move-out date) is September 24, 2020.

I find the Tenant failed to pay the full amount of rent for September 2020, within five days of receiving the 10- Day Notice, pursuant to section 46(4) of the Act.

The Tenant made an Application pursuant to section 46(4) of the Act within five days of receiving the Notice and subsequently submitted that the 10-Day Notice should be invalid as the Landlord noted an incorrect amount of rent owing.

In response, I draw the attention of the parties to the second page of the 10-Day Notice. Under the title, *2. Information for Landlords and Tenants*, it states the following:

“...An error in this Notice or an incorrect move-out date on the Notice does not make it invalid.”

Pursuant to section 68 of the Act, I amend the amount owing that was noted in 10-Day Notice and find the 10-Day Notice valid. Based on the Tenant's evidence, I find that the Tenant was aware that he did not pay the September 2020 rent in full and that he owed \$1,400.00 in outstanding rent. As such, I dismiss the Tenant's Application to cancel the 10-Day Notice without leave to reapply.

As the Tenant is still living in the rental unit, has not paid the balance of the September 2020 rent and has paid to use and occupy the rental unit until November 30, 2020; I find that the Landlord is entitled to an Order of Possession that is effective on November 30, 2020, in accordance with section 55 of the Act.

Based on the undisputed testimony of both parties and in accordance with section 67 of the Act, I find that the Landlord has established a monetary claim and the Tenant owes the Landlord \$1,400.00 in unpaid rent for September 2020.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00.

As such, I authorize the Landlord to keep a portion of the Tenant's security deposit in the amount of \$1,500.00.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on November 30, 2020 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord has established a monetary claim, in the amount of \$1,500.00, which includes \$1,400.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep a portion of the Tenant's security deposit in the amount of \$1,500.00.

Note: I have not made any findings in regard to any potential outstanding "affected" rent that may have accrued during April through August 2020.

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 03, 2020

Residential Tenancy Branch