



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on November 12, 2020, under the Residential Tenancy Act (the Act), seeking:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- Recovery of unpaid rent.

This Hearing also dealt with an Amendment to the Application for Dispute Resolution (the Amendment) filed by the Landlord under the Act on December 7, 2020, seeking to increase the amount of the monetary claim for outstanding rent to include recovery of additional rent now owed.

The hearing was convened by telephone conference call and was attended by the Landlord and the Landlord's Witness/Support Person K.H., both of whom provided affirmed testimony. Neither the Tenants nor an agent acting on their behalf attended. The Landlord and K.H. 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 the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the documentary evidence before me from them and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent to the Tenants by registered mail at the rental unit address on November 23, 2020. The Landlord provided me with the registered mail

tracking number, which I have recorded on the cover page for this decision, and the Canada Post website confirms that the registered mail was sent as described above, that notice cards were left on November 26, 2020, and December 1, 2020, before the registered mail package was returned to sender as unclaimed on December 16, 2020.

The Landlord and K.H. stated that the Tenants are still residing in the rental unit and that the above noted documents were re-served on the Tenants in person by the Landlord in K.H.'s presence approximately one week ago, when the Amendment was served.

Section 90(a) of the Act states that unless earlier received, a document given or served by mail in accordance with section 88 or 89 of the Act is deemed received on the 5th day after it is mailed. Residential Tenancy Policy Guideline (the Policy Guideline) #12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision and that where registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I accept the undisputed and affirmed testimony of the Landlord that the registered mail was sent as described above to the rental unit address. I also accept the undisputed and affirmed testimony of the Landlord and K.H. that the Tenants still reside in the rental unit. In the absence of compelling evidence to the contrary, and as the Canada Post website confirms that the registered mail described above was sent on November 23, 2020, and was subsequently returned to sender as unclaimed after two notice cards were left on November 26 and December 1, 2020, I find on a balance of probabilities that the Tenants intentionally refused to accept or pick up the registered mail. I therefore deem the registered mail package containing the documentary evidence before me from the Landlord and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, received on November 28, 2020, in accordance with section 90(a) of the Act and Policy Guideline #12.

In any event, I find that the Tenants were also re-served the above noted documentary evidence in person by the Landlord and K.H. approximately one week before the hearing.

Based on the above, I therefore accepted the documentary evidence before me from the Landlord for consideration and pursuant to section 7.3 of the Rules of Procedure, the hearing proceeded as scheduled, despite the absence of the Tenants or an agent acting on their behalf.

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 Landlord, copies of the decision and any orders issued in their favor will be mailed to the address listed in the Application.

Preliminary Matters

Preliminary Matter #1

Although the Landlord filed an Amendment with the Branch on December 7, 2020, seeking to increase the amount of their monetary claim for outstanding rent to include recovery of additional rent now owed, the Landlord and K.H. stated that this Amendment was not served on the Tenants until approximately one week prior to the date and time of the hearing. Although the Landlord's Amendment was filed with the Branch within the timelines set out under sections 4.3 and 4.6 of the Rules of Procedure, as the Landlord and K.H. stated that it was not served on the Tenants until approximately one week prior to the hearing, I find that it was not served on the Tenants at least 14 days prior to the hearing as required by rule 4.6 of the Rules of Procedure.

However, rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. It also states that if an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Based on the above, I amended the Application at the hearing pursuant to rule 4.2 of the Rules of Procedure to include additional outstanding rent now owed according to the Landlord up to and including February 2021, despite the fact that I have already found above that the Amendment was not served on the Tenants in time.

Preliminary Matter #2

Although the Landlord provided copies of the 10 Day Notice and the One Month Notice for my review, the second page of the 10 Day Notice was missing, and the entirety of

the One Month Notice was illegible as the photograph taken of it was too small and the quality of the photograph was too poor. As a result, I had the Landlord and K.H. provide me with affirmed testimony regarding the contents of all pages of both notices during the hearing, and I ordered the Landlord to re-submit legible copies of all pages of both notices no later than midnight the following day, Friday February 5, 2021, for my review and consideration. The Landlord was permitted to submit these documents to the Branch either online, by email, by fax, or in person at a Service BC Location or the Branch. The Landlord and their support person were provided with information on how to upload documents and given the Landlords access code. The Landlord was advised that if more legible copies of all pages of the notices were not received in accordance with the above noted timeline, I would render my decision based on the evidence and testimony before me at the hearing.

The Landlord re-submitted a legible copy of the One Month Notice and two legible copies of the first page of the 10 Day Notice within the timeline set out above. No copy of the second page of the 10 Day Notice was submitted. As these documents were submitted within the timelines set out above, I have accepted them for consideration in conjunction with the other documentary evidence already before me and the affirmed testimony provided at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on either 10 Day Notice or the One Month Notice?

Is the Landlord entitled to recovery of unpaid rent?

Background and Evidence

Although the Landlord stated that there is a written tenancy agreement, a copy of this agreement was not submitted for my review or consideration. The Landlord stated that the one year fixed term tenancy agreement commenced on September 1, 2016, and continued on a month to month basis after the expiration of the fixed term. The Landlord stated that rent in the amount of \$1,250.00 was due at the start of the tenancy but that rent is currently \$1,450.00 per month. The Landlord stated that rent is due on the first day of each month in accordance with the tenancy agreement and that a security deposit in the amount of \$625.00 was paid by the Tenants, the entirety of which is still held by them in trust.

The Landlord stated that the Tenants have not paid rent on time since June of 2019 and currently owe rent for August 2020 – February 2021, in the amount of \$10,150.00. The Landlord also stated that the Tenants have permitted an unreasonable number of occupants to reside in the rental unit as they have allowed three additional unauthorized persons to occupy the rental unit in addition to themselves and their two children.

The Landlord and K.H. stated that the One Month Notice was served first, and that it was personally served by the Landlord on the Tenant on August 30, 2020, in the presence of K.H. The Landlord and K.H. stated that the One Month Notice contains the correct address for the rental unit, is signed and dated August 30, 2020, and has an effective date of September 30, 2020. The Landlord and K.H. stated the following grounds were selected on the One Month Notice as the grounds for ending the tenancy:

- the tenant is repeatedly late paying rent
- there are an unreasonable number of occupants in a rental unit.

The Landlord and K.H. also stated that the details of cause section of the One Month Notice states that the notice has been served because the Tenant is repeatedly late paying rent, the rental unit and property are not clean, and the Landlord wishes to renovate and repair the rental unit.

The copy of the One Month Notice re-submitted by the Landlord at my direction is in writing on the Branch form, is signed and dated August 1, 2020, has an effective date of October 1, 2020, contains the address for the rental unit, and lists the following grounds for ending the tenancy:

- the tenant is repeatedly late paying rent; and
- there are an unreasonable number of occupants in a rental unit.

In the details of cause section on the One Month Notice it states that the Tenant has been late paying rent for the last year, the Tenant doesn't keep the place clean, and the Landlord wants to do renovations.

The Landlord stated that when the Tenant failed to pay rent as required in August and September of 2020, a 10 Day Notice was posted to the door of the rental unit in the presence of a witness, D.B., on September 30, 2020. The Landlord and K.H. stated that the 10 Day Notice contains the correct address for the rental unit, is signed and dated September 30, 2020, and has an effective date of September 30, 2020. The Landlord and K.H. stated that the 10 Day Notice states that the Tenant had failed to pay \$2,800.00 in outstanding rent due as of September 1, 2020. Although the Landlord indicated in their Application that they had served a repayment plan in relation to August

2020 rent, at the hearing the Landlord stated that this had not been done and I note that no repayment plan was submitted for my review or consideration.

The Landlord has only submitted page one of the two page 10 Day Notice, which is in writing on an outdated version of the Branch form, is signed and dated September 30, 2020, has no effective date listed and does not contain a full street name for the rental unit address. The 10 Day Notice also states that the Tenant failed to pay \$2,800.00 in rent, due on September 1, 2020.

The Landlord stated that no amount of rent has been paid since the 10 Day Notice was posted to the door of the rental unit on September 30, 2020, and that the Tenants currently owe \$10,150.00 in outstanding rent for August 1, 2020 – February 28, 2021. The Landlord stated that to their knowledge, the Tenants have also not sought cancellation of either the 10 Day Notice or the One Month Notice by filing an Application for Dispute Resolution with the Branch.

As a result of the above, the Landlord sought recovery of \$10,150.00 in unpaid rent and an Order of Possession for the rental unit as soon as possible. The Landlord also stated that if they are entitled to any compensation for unpaid rent, that they would like authorization to withhold the Tenants' \$625.00 security deposit towards any amounts owed.

No one appeared at the hearing on behalf of the Tenants to provide me with any evidence or testimony for consideration, despite my findings earlier in this decision that the Tenants were deemed served with the Application, the Notice of Hearing and the documentary evidence before me from the Landlord on November 28, 2020, and then personally served with duplicate copies of these documents approximately one week before the hearing.

Analysis

As there is no evidence before me to the contrary, I find that the terms of the tenancy agreement are as stated by the Landlord at the hearing. I also accept the affirmed and undisputed testimony of the Landlord and K.H. the One Month Notice in the documentary evidence before me was personally served on the Tenants on August 30, 2020.

Section 47(4) of the Act states that a tenant may dispute a One Month Notice by making an application for dispute resolution within 10 days after the date the tenant receives the

notice. As a result, I find that the Tenants had until September 9, 2020, to dispute the One Month Notice by filing an Application with the Branch seeking its cancellation. Section 47(5) of the Act states that if a tenant who has received a notice under this section does not 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 by that date.

As there is no evidence before me that the Tenants sought to dispute the One Month Notice by filing an Application with the Branch by September 9, 2020, I therefore find that they were conclusively presumed, pursuant to section 47(5) of the Act, to have accepted that the tenancy was ending in accordance with the One Month Notice and required to vacate the rental unit by October 1, 2020, in compliance with it. As a result, I find that the Tenants have been overholding the rental unit since October 1, 2020.

Based on the above and as I find that the One Month Notice complies with section 52 of the Act, the Landlord is therefore entitled to an Order of Possession for the rental unit. As the effective date of the One Month Notice has passed, and the Landlord states that the Tenant has not paid rent for 7 months, I therefore grant the Landlord and Order of Possession for the rental unit effective two days after service on the Tenants, pursuant to sections 55(2)(b) and 68(2)(a) of the Act.

As I have already found above that the tenancy is ended in accordance with the One Month Notice, I have made no findings of fact or law in relation to the validity of the 10 Day Notice.

As there is no evidence before me to the contrary, I also accept as fact the Landlord's affirmed testimony that the Tenants have not paid any rent for August – December of 2020, or January – February of 2021. Policy Guideline #3 states that although a tenant is not liable to pay rent after a tenancy agreement has ended, if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. It also states that in certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

As a result, I am satisfied that the Tenant owes \$9,166.02 in outstanding rent as follows:

- \$2,900.00 in outstanding rent for August and September of 2020, calculated at \$1,450.00 per month;
- \$5,800.00 in outstanding overholding rent for October – January 2021, calculated on a per diem basis up to the full \$1,450.00 in rent owed per month; and

- \$466.02 in overholding rent for February 2021, calculated at \$51.78 per day (\$1,450.00/28 days), up to and including the date of this decision.

As per the Landlord's request and pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenants' \$625.00 security deposit as partial repayment of the above noted amount owed. Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary Order in the amount of \$8,541.02,

If the Landlord incurs further loss of rent for February 2021, after the date of this decision and service of the attached Order of Possession, they can seek additional per diem rent for any days the Tenant overholds the rental unit past today's date, and any additional loss of rent suffered, if applicable.

Conclusion

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 **\$8,541.02**. 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 such enforcement may be 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 Act.

Dated: February 9, 2021

Residential Tenancy Branch