



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NARAMATA BENCH PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, MNDL, MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for compensation for damage to the rental unit.

The Agent for the Landlord stated that on December 11, 2020 the Dispute Resolution Package was sent to the Tenant by registered mail. The Landlord submitted Canada Post documentation that corroborates mail was sent on December 11, 2020. The Tenant stated that he received these hearing documents.

On December 07, 2020 the Landlord submitted evidence to the Residential Tenancy Branch, which included a rent ledger, a copy of the tenancy agreement, and the One Month Notice to End Tenancy for Cause. The Agent for the Landlord stated that these documents were served to the Tenant with the Dispute Resolution Package. The Tenant stated that he received the rent ledger and the One Month Notice to End Tenancy for Cause from the Landlord, but he did not receive the tenancy agreement. The documents the Tenant acknowledged receiving were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent that became due after December 31, 2020. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent?
Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 15, 2013;
- the current monthly rent of \$1,333.00;
- rent is due by the 15th day of each month; and
- the Tenant is still living in the unit.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was served to the Tenant, via registered mail, on November 23, 2020. The Tenant stated that he received the One Month Notice to End Tenancy for Cause in the mail on December 08, 2020.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by January 01, 2020. The parties agree that the reasons for ending the tenancy cited on One Month Notice to End Tenancy for Cause are that the tenant is repeatedly late paying rent; the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property, and the tenant or a person permitted on the property has caused extraordinary damage.

The Property Manager stated that on November 23, 2020 he posted the One Month Notice to End Tenancy for Cause on the gate to the rental unit. The Tenant stated that

he did not receive the One Month Notice to End Tenancy for Cause that was allegedly posted on the gate.

The Tenant was asked if he filed an Application for Dispute Resolution to dispute this One Month Notice to End Tenancy for Cause and he replied that he had not. Upon being advised that he is presumed to accept that the tenancy ends on the basis of the One Month Notice to End Tenancy for Cause because he did not file an Application for Dispute Resolution to dispute it, he replied that he had applied to dispute it. The Tenant was unable to provide a file number to establish that he had filed an Application for Dispute Resolution to dispute this One Month Notice to End Tenancy for Cause. The Agent for the Landlord stated that he was not served with an Application for Dispute Resolution from the Tenant that indicates he disputed this One Month Notice to End Tenancy for Cause.

The Landlord applied for compensation for unpaid rent in the amount of \$9,256.00. The Landlord submitted a rent ledger that indicates this amount of rent is overdue, for the period ending December 31, 2020.

The Tenant stated that the rent ledger is correct, except it does not reflect a \$1,350.00 payment he made on an unknown date in December of 2020. The Agent for the Landlord stated that the no rent payment was made by the Tenant is December of 2020.

The Landlord and the Tenant agree that the Tenant paid \$1,350.00 in rent in January of 2021 and \$1,350.00 in rent in February of 2021.

The Landlord and the Tenant agree that no rent was paid for March of 2021.

Analysis

Section 47 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy for a variety of reasons by providing proper written notice.

On the basis of the undisputed evidence, I find that a One Month Notice to End Tenancy for Cause was served to the Tenant by registered mail. On the basis of the testimony of the Agent for the Landlord and Canada Post documentation submitted in evidence, I find that this One Month Notice to End Tenancy for Cause was mailed to the Tenant on November 23, 2020.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that on December 08, 2020 the Tenant received the One Month Notice to End Tenancy for Cause which was mailed to him. I therefore find that the Tenant received proper written notice that the tenancy was ending pursuant to section 47 of the *Act*.

On the basis of the undisputed evidence, I find that the One Month Notice to End Tenancy for Cause declared that the Tenant must vacate the unit by January 01, 2020.

Section 47(2) of the *Act* stipulates that a notice to end the tenancy under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As this One Month Notice to End Tenancy for Cause was served in November of 2020, it is readily apparent that the notice should have declared that the tenancy end on January 01, 2021, rather than January 01, 2020. As the parties agree that rent was due by the 15th day of each month, I find that the notice to end tenancy should have declared that the tenancy ended on January 14, 2021.

Section 53(1) of the *Act* stipulates that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Section 53(2) of the *Act* stipulates that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find that the effective date of the One Month Notice to End Tenancy for Cause is deemed to be January 14, 2021, pursuant to section 53 of the *Act*.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. I find that the Tenant has submitted insufficient evidence to establish that he filed an Application for Dispute Resolution in which he disputed this One Month Notice to End Tenancy for Cause. In reaching this conclusion I was heavily influenced by the Tenant's inability to provide a file number to corroborate his testimony that he filed an Application for Dispute Resolution.

As there is insufficient evidence that the Tenant disputed this Notice to End Tenancy, I find that the Tenant is conclusively presumed to have accepted that the tenancy was ending on January 14, 2020, pursuant to section 47(5) of the Act. I therefore grant the Landlord an Order of Possession.

I find that the rent ledger submitted by the Landlord is the best record of the amount rent that was overdue for the period ending December 31, 2020. I find that this ledger appears to be detailed and complete.

I find that the Tenant submitted no evidence to corroborate his testimony that he paid \$1,350.00 in rent in December of 2020. I find that his testimony regarding this payment is not particularly credible, as he does not recall the date of payment.

I therefore rely on the rent ledger to conclude that the Tenant owes \$9,256.00 in rent for periods prior December 31, 2020.

As this tenancy ended on January 14, 2021, I find that the Tenant was obligated to pay regular rent for the period between January 01, 2021 and January 14, 2021. As the Tenant remained in possession of the rental unit after January 14, 2021, I find that he was obligated to pay overholding rent for time he remained in possession of the rental unit. I therefore find that he was obligated to pay overholding rent for the period between January 15, 2021 and March 02, 2021.

I find that the Tenant must pay \$1,333.00 in rent for the period between January 01, 2021 and January 31, 2021; \$1,333.00 in rent for the period between February 01, 2021 and February 28, 2021; and in \$85.88 in rent for the first two days of March of 2021, which is a total of \$2,751.88.

On the basis of the undisputed evidence, I find that the Tenant paid \$1,350.00 in rent in January of 2021 and \$1,350.00 in rent in February of 2021, which is a total of \$2,700.00. I find that these payments shall be applied to rent owing for the period between January 01, 2021 and March 02, 2021, leaving \$51.88 due in overholding rent.

I decline to order the Tenant to pay rent for any period after March 02, 2021, as it is entirely possible the Tenant may vacate the rental unit on March 03, 2021. In the event the Tenant remains in possession of the unit after March 02, 2021, the Landlord has the right to file another Application for Dispute Resolution for additional rent owed.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$9,407.88, which includes \$9,256.00 in rent, \$51.88 in overholding rent, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$9,407.88. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

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: March 02, 2021

Residential Tenancy Branch