



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILLINI PROPERTIES LP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

On December 14, 2020, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing. I.K. and D.S. attended the hearing as agents for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by registered mail on or around December 18, 2020 and D.S. confirmed that the Landlord received this package. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Notice of Hearing package.

D.S. advised that the Tenant was served the Landlord's evidence package by hand on February 26, 2021 and the Tenant confirmed that he received this package. Based on this undisputed evidence, I am satisfied that the Tenant was duly served the Landlord's evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

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

All parties agreed that the tenancy started on November 1, 2006, that rent was currently established at an amount of \$742.00 per month, and that it was due on the first day of each month. A security deposit of \$387.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that the Landlord conducted an inspection of the rental unit on February 13, 2020 and it was discovered that a leak in the roof had caused damage to the rental unit. However, the Tenant did not inform the Landlord that this had been happening for quite some time. As the Tenant did not report this leak, there was a considerable amount of mold and the resultant damage was more extensive. The parties agreed that the Tenant would be moved to a different unit in the building, that the current tenancy agreement would not be terminated and would continue under the same terms, and that the Tenant would move back into the rental unit once the repairs were completed. The Tenant moved into the other unit on March 9, 2020.

All parties agreed that the Notice was served to the Tenant by hand on December 9, 2020. The Notice indicated that \$5,936.00 was owing for rent on December 1, 2020. The effective end date of the tenancy was noted as December 19, 2020.

I.K. advised that the Tenant did not pay any rent for the following months:

- April 2020 rent: \$742.00
- May 2020 rent: \$742.00
- June 2020 rent: \$742.00
- July 2020 rent: \$742.00
- August 2020 rent: \$742.00

- October 2020 rent: \$742.00
- November 2020 rent: \$742.00
- December 2020 rent: \$742.00
- Total rental arrears: **\$5,936.00**

He also stated that the Tenant has not paid any rent for January 2021, February 2021, or March 2021 either. The Tenant did not have any authorization to withhold any amount of rent. As such, the Landlord is seeking an Order of Possession.

D.S. confirmed that all parties agreed that the Tenant would move into the new unit until the repairs on the rental unit were completed, that the tenancy agreement would continue under the same terms, and that the Tenant would move back into the rental unit once the repairs were finished. He advised that the Tenant was provided with moving boxes and assistance to help with his move to the new unit. He estimated that the rental unit will be repaired within the next 30 – 45 days.

While the Tenant initially advised that he was forced to move, he then acknowledged that he agreed to move to the new unit until the repairs were complete, that the tenancy agreement would continue under the same terms, and that he would move back into the rental unit once the repairs were done. He confirmed that he did not pay rent from April 2020 to August 2020 and that he paid September 2020 rent to “finish off rent” for the rental unit. He also acknowledged that he has not paid any rent from October 2020 to the date of the hearing. While he made submissions about being unhappy with the quality of the unit that he was moved to, he confirmed that he did not have any authority under the *Act*, or any authorization from the Landlord to withhold rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent in full or to

dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant received the Notice on December 9, 2020. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or 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 to which the notice relates by that date."*

As the Tenant received the Notice on December 9, 2020, he must have paid the rent in full or disputed the Notice by December 14, 2020 at the latest. While the Tenant disputed the Notice within the five-day time frame, the consistent evidence before me is that the parties agreed that the Tenant would move to another unit until repairs to his rental unit were completed. As well, the current tenancy agreement would continue under the same terms and the Tenant would be permitted to move back into the rental unit once repairs are completed. Given this, I am satisfied that the Tenant is required to pay rent under the same terms of the original tenancy agreement, while in the temporary unit, unless he had a valid reason under the *Act*, or authorization from the Landlord to withhold the rent.

While the amount of rent noted on the Notice is not correct as the Landlord was seeking rent owed during the State of Emergency period, the Tenant paid rent for September 2020. As such, I am satisfied that the Tenant was aware that rent was still owed. Furthermore, I am also satisfied that he refused to pay rent after September 2020 because of his dissatisfaction with the conditions of the current unit. However, as this is not a valid reason under the *Act* to withhold rent, and as he did not have any authorization from the Landlord to withhold the rent, I find that the Tenant breached the *Act* and jeopardized his tenancy by not paying the rent as per the terms of the continuing tenancy agreement.

As some rent was owed, from October 2020 to December 2020, and the Tenant simply refused to pay any rent at all, I am satisfied that the Landlord's Notice is valid. Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. Ultimately, the Order of Possession takes effect **two days** after service on the Tenant.

As a note, this Decision ends the tenancy agreement between the Landlord and the Tenant for the original rental unit. While the Tenant is occupying a different unit currently, a new tenancy has not been created for this other unit. Therefore, to ensure that the Landlord has vacant possession of both units, the Landlord will be issued a separate Order of Possession for each of the units.

Conclusion

The Tenant's Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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.

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: March 10, 2021

Residential Tenancy Branch