



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Howe Street Developments General Partner
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **TT: CNR FFT CNC OLC FFT**
 LL: FFL, OPR-DR

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The corporate landlord applied for:

- An order of possession pursuant to section 55;
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant named the personal agent of the corporate landlord TM as the respondent and applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- Cancellation of a 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fees from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal respondent TM (the “Landlord”) confirmed that they are the agent for the corporate landlord who ought to be named in the tenant’s application. With the parties consent the style of cause for the present applications was amended to replace the personal agent with the corporate entity.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

The tenant referenced a package of evidence from the landlord which they have not received. The landlord clarified that the additional evidentiary materials were in support of a separate application scheduled for a different date. I advised the parties that I would only consider those pieces of evidence included in the landlord's package for the present applications.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is either party entitled to recover their filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed-term tenancy began on August 1, 2020. The monthly rent is \$5,950.00 payable on the first of each month. A security deposit of \$2,975.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord issued a 10 Day Notice dated February 16, 2021 for an arrear of \$5,950.00 unpaid rent that was payable on February 1, 2021. The landlord posted the notice on the rental unit door on February 16, 2021. The tenant confirmed that they were served with the 10 Day Notice. The tenant filed their present application to dispute the 10 Day Notice on February 24, 2021. The tenant further submit that they left a cheque for the full amount of the rent with the concierge of the building as instructed by the landlord on February 25, 2021. The landlord testified that they received the payment of the rental

arrear on February 25, 2021 but indicated to the tenant that it was accepted for use and occupancy only and did not reinstate the tenancy.

The landlord subsequently issued a 1 Month Notice to End Tenancy for Cause dated March 18, 2021. The reasons provided on the notice for the tenancy to end are:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site/property/park

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant filed a separate application to dispute the 1 Month Notice on March 22, 2021. The tenant disputes that their conduct has given rise to a basis to end the tenancy.

The tenant also seeks an order that the landlord comply with the Act, regulations or tenancy agreement. The tenant submits that the landlord has failed to maintain the residential property in a reasonable state of repair, that there are multiple deficiencies in the rental unit that have not been corrected, that the landlord accesses the rental unit too frequently and without sufficient notice.

Analysis

Section 90 of the *Act* provides that a document served by attaching a copy to a door is deemed served on the 3rd day after it is attached. I accept the landlord's undisputed evidence that the 10 Day Notice was posted on the rental unit door on February 16, 2021. Accordingly, I find the 10 Day Notice is deemed served on the tenant on February 19, 2021, three days after posting.

Section 46(4) of the *Act* provides that a tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent may, within 5 days after receiving the notice pay the overdue rent or dispute the notice by making an application for dispute resolution.

In the case at hand, the tenant filed their application to dispute the 10 Day Notice on February 24, 2021, the 5th day after being deemed served on February 19, 2021 and paid the overdue rent on February 25, 2021, the 6th day after service outside of the time limit provided under the *Act*.

Based on the testimonies of the parties and their documentary evidence including correspondence I find that the tenant was obligated to pay the full rent of \$5,950.00 on the first of each month. I accept the evidence that the tenant failed to pay the full rent and there was a rental arrear of \$5,950.00 giving rise to the issuance of the 10 Day Notice. Based on the contents of the correspondence between the parties I find that there was no extension of the statutory time limits or waiver of the landlord's right to seek an Order of Possession on the basis of the unpaid rent. I further accept that payments accepted after the 5 days provided under the *Act* were clearly indicated to be for use and occupancy only and did not reinstate the tenancy. I therefore find that the 10 Day Notice of February 16, 2021 is valid and dismiss the tenant's application do cancel the notice.

I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. Accordingly, pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

As I have found that this tenancy ends in accordance with the 10 Day Notice it is unnecessary to consider the 1 Month Notice.

I find insufficient evidence in support of the other portions of the tenant's claim. I find that much of their complaints regarding the landlord's access to the rental unit and condition of the suite to not be supported in the documentary materials and to have little air of reality. The tenant's written submissions and correspondence from the tenant's previous counsel as to these breaches are wholly disputed by the landlord. I find that the tenant has not met their evidentiary burden on a balance of probabilities to establish that there has been any breach of the *Act*, regulations or tenancy agreement that would

give rise to an order of compliance. I therefore dismiss this portion of the tenant's application.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$2,975.00 to \$2,875.00.

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: April 30, 2021

Residential Tenancy Branch