



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUMN PROPERTIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”) for an order of possession to enforce a 10-Day Notice for Unpaid Rent or Utilities (the “*Notice*”) issued on November 16, 2020, a monetary order for unpaid rent, permission to retain the security deposit, and for the return of their filing fee. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”) attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Tenant with the Notice of Hearing documents had been served by Canada Post Registered mail sent on March 18, 2021. Pursuant to section 90 of the *Act*, documents served in this manner are deemed received five days later. Therefore, I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent?

- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that they posted the Notice to End Tenancy to the front door of the rental unit on November 16, 2020, listing an effective date of December 1, 2020, and an outstanding rent amount of \$1,235.00. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has made a few payments since receiving the Notice but that they had not paid the outstanding rent as indicated on the Notice within the required 5 days after receiving the Notice.

The Landlord was asked why they had to wait 112 days before applying to enforce this Notice through the Residential Tenancy Branch; the Landlord responded that they had been trying to work with the Tenant over the last few months in the hope that they would get caught up with their rent payments. The Landlord testified that they have now decided to enforce the November as the Tenant continues to be in rent arrears.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the undisputed testimony of the Landlord that they issued this Notice to end tenancy on November 16, 2020, and that they took no action to enforce this Notice until March 10, 2021.

Due to the length of time, 112 days, between when this notice had been issued to the Tenant and when the Landlord filed to enforce this Notice, I find that the legal principle of estoppel now applies to this Notice. Estoppel is a legal doctrine which holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to a strict

enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, I find that the Landlord established a pattern of not enforcing this Notice and that the Tenant relied on this pattern over the past three months. Consequently, I find the Notice issued November 16, 2020, is of no effect and that this tenancy continues until it is ended in accordance with the Act.

I dismiss the remainder of the Landlord's application for a monetary order for unpaid rent and permission to retain the security deposit, with leave to reapply.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Landlord's application for an order of possession and find that the 10-Day Notice issued November 16, 2021, is of no effect under the *Act*.

The Landlord's application for a monetary order for unpaid rent and for permission to retain the security deposit is dismissed with leave to reapply.

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: June 21, 2021

Residential Tenancy Branch