



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PICKET FENCE PROPERTY MANAGEMENT
GROUP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On May 12, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”).

On July 14, 2021, the Tenants made another Application for Dispute Resolution seeking to cancel a second 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Act*.

On July 17, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 1:30 PM on September 20, 2021.

Tenant J.F. attended the hearing. The Landlord/owner attended the hearing as well, with C.H. attending as an agent for the Landlord. C.H. advised that she represented the owner of the rental unit and that her property management company was not named correctly as the one of the Respondents on the Tenants’ Applications. As such, the style of cause on the first page of this Decision has been amended to reflect the correct names of the Landlord/Respondents.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she did not serve the first Notice of Hearing and evidence package to the Landlords to dispute the 10 Day Notice to End Tenancy for Unpaid Rent of May 12, 2021. She stated that this was not served because both parties were able to settle this dispute. C.M. confirmed that the parties had settled this dispute and they were no longer seeking an Order of Possession on this first notice to end tenancy. As such, the Tenants' first Application for Dispute resolution is dismissed without leave to reapply.

The Tenant advised that she served the second Notice of Hearing and evidence package to the property management office by hand on September 7, 2021. She stated that this package was served so late because both Tenants had suffered after contracting COVID, and due to these symptoms, she was confused and struggled to understand instructions for service. C.M. confirmed that her office received this package on or around September 7, 2021, but she only went into the office on September 14, 2021 to retrieve it. She also stated that when she reviewed the package, the Notice of Hearing documents were not the Tenants' Application but were actually copies of the Landlords' Notice of Hearing package. The Tenant acknowledge that she likely mistakenly served the Landlords the wrong copy of the Notice of Hearing documents.

Based on this undisputed evidence, I am satisfied that the Tenants' Notice of Hearing package was not the right package and was not served to the Landlords within three days of May 25, 2021, the date that it was provided to the Tenants. As this package was served late and not in accordance with Rule 3.1 of the Rules of Procedure, the Tenants' second Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent of July 6, 2021 is dismissed in its entirety. In addition, as their evidence was served late and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of

Procedure, this evidence will be excluded and not considered when rendering this Decision.

C.H. advised that each Tenant was served a Notice of Hearing and evidence package by registered mail on July 29, 2021 and the Tenant confirmed that they received two separate packages. In addition, C.M. stated that additional evidence was served to the Tenants later. The Tenant confirmed that they received this additional evidence, that they had reviewed it, and that they were prepared to respond to it. Based on this undisputed evidence, I am satisfied that the Tenants were duly served the Notice of Hearing and evidence packages. As such, I have accepted all of the Landlords' 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

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recover the filing fee?

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 June 1, 2020, that rent was currently established at an amount of \$2,000.00 per month, and that it was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

C.H. advised that the Notice was served to the Tenants by partially posting it to their door, and partially under it, on July 6, 2021. The Notice indicated that \$2,000.00 was owing for rent on July 1, 2021. The effective end date of the tenancy was noted as July 16, 2021.

She testified that the Tenants did not pay July 2021 rent on July 1, 2021. Thus, the Notice was served. The Tenants then paid \$700.00 on July 15, 2021 and \$1,300.00 on August 3, 2021 to fully pay off July 2021 rent. Receipts for use and occupancy only for these payments were issued and were submitted as documentary evidence. The Tenants then paid \$800.00 on August 30, 2021 towards August 2021 rent, they paid \$2,000.00 on September 3, 2021 as the remaining balance owed for August 2021 rent and for a portion of September 2021 rent, and then they paid \$1,200.00 on September 13, 2021 to bring them completely up to date for rent owing as of the date of the hearing. She referred to receipts for these payments, that were submitted as documentary evidence, indicating that these payments were also accepted for use and occupancy only. She advised that the Tenants did not have any authorization to withhold the rent and they are still seeking an Order of Possession as the Tenants did not comply with the *Act* in response to receiving the Notice.

The Tenant confirmed that they received the Notice on July 9, 2021. She stated that they had worked with C.H. in the past regarding late payments of rent due to their whole house contracting COVID. While they did not have any written confirmation from the Landlords authorizing them not to pay rent on time, it was her belief that the previous communications formed an "understanding" that allowed for this. She confirmed that they paid \$700.00 on July 13, 2021 and \$1,300.00 on July 20, 2021 for July 2021 rent. As well, she acknowledged the payments made in August and September 2021, as suggested by C.H., and she confirmed being served the various receipts for use and occupancy only.

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 Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, 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 Tenants received the Notice on July 9, 2021. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities 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 Notice was received on July 9, 2021, the Tenants must have paid the rent in full or disputed the Notice by July 14, 2021 at the latest. The undisputed evidence is that the Tenants did not pay the rent in full by this date to cancel the Notice. Furthermore, while the Tenants disputed this Notice, their Application was dismissed without leave to reapply. Moreover, as the Tenants did not have a valid reason under the *Act* for withholding the rent, I am satisfied that they breached the *Act* and jeopardized their tenancy.

As the Landlords' Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, as the Tenants have not complied with

the *Act*, and as the tenancy was never reinstated due to receipts for use and occupancy only being provided, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession that takes effect on **September 30, 2021 at 1:00 PM** after service of this Order on the Tenants.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenants have paid all their rent until the end of September 2021, there is no longer any rental arrears.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain a portion of the security deposit in satisfaction of this claim.

Conclusion

The Tenants' Applications for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlords effective on **September 30, 2021 at 1:00 PM after service of this Order** on the Tenants. Should the Tenants 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: September 21, 2021

Residential Tenancy Branch