



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mount Douglas Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 10, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 9, 2021 (the "10 Day Notice").

The hearing was scheduled for 11:00 A.M. on January 24, 2022 as a teleconference hearing. The Landlord's Agent G.C. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 24 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord's Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on January 24, 2022.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenant, nor a representative acting on their behalf attended the hearing to present any evidence or

testimony for my consideration regarding the Tenant's Application, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

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, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession and a monetary order for unpaid rent, pursuant to section 55 of the *Act*.

The Landlord's Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on August 1, 2019. The Tenant is required to pay rent in the amount of \$600.00 as well as an additional \$50.00 for utilities, which are due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00 which the Landlord continues to hold. The Landlord provided a copy of the tenancy agreement in support.

The Landlord's Agent testified that the Landlord is a housing society that has an agreement regarding the operation of residential property with the Municipality of Saanich. The Landlord's Agent stated that as of March 1, 2020 the Tenant was eligible to start receiving a \$200.00 rent subsidy based on his annual income being below \$15,000.00. The Landlord's Agent stated that the Tenant agreed to and signed the funding agreement which stipulates that the Tenant must continue to

qualify based on the annual reviews of his income in order to receive the \$200.00 subsidy.

The Landlord's Agent stated that during an annual income review in June of 2021, it was found that the Tenant earned above the \$15,000.00, making him no longer eligible to receive the \$200.00 subsidy. The Landlord's Agent stated that she notified the Tenant verbally and in writing several times that his rent would return to being \$600.00 as of September 2021, as he no longer qualified to receive the \$200.00 subsidy. The Landlord's Agent stated that the Tenant has not made any efforts to respond to the Landlord.

The Landlord's Agent stated that the Tenant only paid rent in the amount of \$400.00 rather than \$600.00 which was due on September 1, 2021. The Landlord's Agent stated that she served the Tenant with a 10 Day Notice dated September 9, 2021 with an effective date of September 22, 2021 by posting it to the Tenant's door on September 9, 2021.

The Landlord's Agent testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$200.00 which was the remaining balance of unpaid September 2021 rent.

The Landlord's Agent stated that the Tenant has not paid any amount of outstanding rent to the Landlord since receiving the 10 Day Notice. Furthermore, the Landlord's Agent stated that the Tenant has only paid \$400.00 rather than \$600.00 in October, November, December 2021, and January 2022. The Landlord stated that the Tenant currently owes rent in the amount of \$1,000.00. As such, the Landlord is seeking an order of possession and a monetary order in relation to the unpaid rent.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 2 of the Residential Tenancy Regulations outlines the Exemptions from the Act. Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act *[assignment and subletting, rent increases]* if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;

- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) **any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:**
 - (i) the government of British Columbia;**
 - (ii) the British Columbia Housing Management Commission;**
 - (iii) the Canada Mortgage and Housing Corporation;**
 - (iv) a municipality;**
 - (v) a regional district;**
- (h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

In this case, I accept that the Landlord is a housing society that has an agreement regarding the operation of the residential property with the municipality of Saanich. As such, I find that the Landlord is exempt from the requirements relating to rent increases set in the *Act*, pursuant to Section 2 of the Regulation.

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the Tenant has a right under this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

I accept that the parties entered into a tenancy agreement at the start of the tenancy to which they agreed that the Tenant would be required to pay rent in the amount of \$600.00 to the Landlord on the first day of each month. I accept that the Landlord had

been providing the Tenant a rent Subsidy in the amount of \$200.00 each month on the basis that the Tenant remained eligible for the subsidy. I accept that the Landlord determined that the Tenant was no longer qualified to receive the rent subsidy as of September 1, 2021 at which point the Tenant would be required to resume paying the full amount of rent as reflected in the tenancy agreement.

I accept that the Tenant failed to pay rent in the amount of \$600.00 to the Landlord on September 1, 2021. As such, I find that the Tenant is in breach of Section 26 of the *Act*.

The Landlord's Agent testified that she served the Tenant with a the 10 Day Notice dated September 9, 2021 with an effective vacancy date of September 22, 2021 by posting it to the Tenant's door. As such, I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the *Act*.

After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on September 10, 2021. As no one attended the hearing for the Tenant, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. I accept that after receiving the 10 Day Notice, the Tenant did not pay the outstanding rent to the Landlord. Furthermore, I accept that the Tenant failed to pay the full amount of rent for October, November, December 2021, and January 2022 for a combined amount of unpaid rent totalling \$1,000.00.

According to Section 55 of the *Act*: (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to

section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,000.00.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,000.00.

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,000.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 24, 2022

Residential Tenancy Branch