



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

On March 24, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for May 27, 2021. This final, reconvened hearing was set down for January 31, 2022 at 11:00 AM.

The Tenant attended the final, reconvened hearing, with S.M. attending the hearing as an advocate for the Tenant. D.D. and S.S. attended the final, reconvened hearing as agents for the Landlord. At the outset, 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 provided a solemn affirmation.

Given that the other hearings were adjourned as the parties were attempting to settle the matter, the September 24, 2021 Interim Decision permitted the parties to submit further evidence should they not be able to settle this matter themselves. The Tenant did not submit any additional evidence to this file and the Landlord submitted no documentary evidence at all.

As well, 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 Notice 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 sometime in 2012, that the rent was established at a subsidized amount of \$576.00 per month, and that it was due on the first day of each month. A copy of the signed tenancy agreement was not submitted as documentary evidence.

D.D. advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on March 15, 2021 by registered mail. D.D. testified that \$1,380.00 is the economic rent and it was owing for rent on March 1, 2021. He stated that the Tenant was provided with multiple requests, in late 2020, for documentation to confirm her status to qualify for a subsidy; however, she did not provide those documents. Therefore, the Notice was served based on the economic rent owing for March 1, 2021. He testified that the Tenant only provided the required documents in September 2021. As well, he stated that the Tenant has not paid any rent, nor has the Landlord received any subsidy since service of the Notice.

The Tenant confirmed that she received requests from the Landlord in late 2020 for documents pertaining to her renewal for her subsidy application. She claimed to have sent these documents to the Landlord in February 2021, despite an email she submitted as documentary evidence of March 23, 2021 stating that "I have sent most of the info you need for the rent review." She suggested that the communication with the Landlord has been poor, and it was not made clear to her what documents, if any, were still required. She claimed to have paid \$600.00 per month to the Landlord in January, February, and March 2021; however, she has not paid any rent since.

S.M. advised that it is her belief that the Landlord could have proceeded with the Tenant's subsidy application with the documents that the Tenant provided in February 2021, and that the tax form that the Landlord is claiming is necessary is not actually required.

D.D. confirmed that the Landlord received payment from the Tenant of \$600.00 per month prior to March 2021; however, those payments were erratic.

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. 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 was served the Notice on March 15, 2021 by registered mail. According to Section 46(4) of the *Act*, the Tenant 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 deemed received on March 20, 2021, the Tenant must have paid the rent in full or disputed the Notice by March 25, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full by this date to cancel the Notice. However, the Tenant did dispute this Notice on time.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

The consistent testimony before me is that the Landlord requested multiple times in late 2020 that the Tenant provide specific documents required to ensure that the Tenant qualified for a rent subsidy. While the Tenant claims to have provided those documents in February 2021, I note that her own evidence of an email dated March 23, 2021 indicates that she provided “most of the info you need for the rent review.” As such, I find it more likely than not that the Tenant did not submit to the Landlord the required documents necessary for the rent subsidy application, and that she was aware of this.

While S.M. claims that the Tenant's tax documents that the Landlord asked for were not necessary for completing the subsidy application, I do not find that she has provided sufficient evidence to support this claim. Given that the Tenant stated in that same 2021 email that she did not have her 2020 taxes done yet, I can reasonably infer that she was aware that the tax documents were a necessary component of the subsidy application.

When reviewing the totality of the evidence before me, I am satisfied on a balance of probabilities that the Landlord provided the Tenant with sufficient opportunities to submit the documents required for her to qualify for a rent subsidy. However, she failed to do so in a timely manner and as a result, the Tenant was required to pay the economic rent for March 2021. As it is evident that this subsidy application could not be processed due

to the Tenant's negligence, I am satisfied that she breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

With respect to the outstanding rental arrears, the Landlord has not made it clear how much rent is in arrears exactly. As such, the Landlord can apply to recover these amounts in a future Application.

Conclusion

The Tenant's Application for Dispute Resolution 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: January 31, 2022

Residential Tenancy Branch