



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKSTON DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR RR RP FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 18, 2022. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord was present at the hearing. The Tenant was also at the hearing, along with his mother, L.S. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's evidence, and the Landlord confirmed receipt of the Tenant's application and Notice of Hearing.

At the start of the hearing, the Landlord stated that he is only seeking an order of possession, and does not wish to pursue a monetary order for any unpaid rent. As such, I will not issue any monetary orders, pursuant to section 51(1.1) of the Act, and the Landlord has leave to reapply for unpaid rent, should this be required at a later date. This hearing will focus on the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), and the order of possession.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the Tenant's application, with leave to reapply, with the exception of the following claim:

- to cancel the 10 Day Notice.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that rent is currently set at \$1,050.00 per month. The Landlord testified that he does not hold a security deposit. The Landlord provided copies the current and previous tenancy agreements. The Tenant moved into the rental unit around September 9, 2019, a tenancy agreement was signed for \$600.00 per month and rent was due on the first of the month. In February 2021, the Tenant signed a new tenancy agreement with monthly rent being set at \$1,050.00. Some modifications were made to the tenancy agreement, such as rent now being due on the 30th of each month. There was also a term added in the "what is included in rent" portion allowing for parking for 1 vehicle.

The Tenant signed this second tenancy agreement, with some modified terms and rental amount, and did not raise any issue with the Landlord about improper rent amounts until the Notice was issued, when his mother, L.S., saw that the Tenant's rent had gone up.

The Landlord stated that the Tenant failed to pay any rent for November 2021, December 2021, January 2022, or February 2022. The Tenant acknowledged receiving the Notice on January 8, 2022, which specified that \$3,150.00 was overdue as of that date (for November, December and January). The Landlord specified that since that Notice was issued, the Tenant has not paid any amounts, and the Tenant also owes February rent on top of this.

The Tenant's mother, L.S., stated that the Landlord never gave the Tenant a Notice of Rent Increase, so she is not sure why the rent should be \$1,050.00, when it used to be \$600.00. L.S. did not dispute that the Tenant signed the second tenancy agreement, but stated she was not made aware of it until the Notice was issued. The Tenant did not speak to why he withheld rent starting in November, since it was not until January (when the Notice was issued) that his mother found out about his rent going up the previous year.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I note there are two tenancy agreements, the first of which was signed at the start of the tenancy, for \$600.00 per month, with rent being due on the first of the month. Then, the Tenant signed a new tenancy agreement for February 1, 2021, and rent was set to \$1,050.00. A couple of terms were also modified as part of this second tenancy agreement (change in due date for rent, and start of monthly rental period, plus an additional note regarding parking for 1 vehicle was included).

I note the Tenant's mother, L.S., stated that she does not feel this was a proper rent increase, and she feels that the Landlord should have served a Notice of Rent Increase in accordance with the *Act*, if he wanted to raise rent. However, I do not find the second tenancy agreement, and the increased rent amount in that agreement, is governed by

the rent increase provisions under the Act, as it was a new tenancy agreement, also with other modified terms. I note the Tenant voluntarily signed the second tenancy agreement. The Tenant was not required to sign a new tenancy agreement, to change any terms, or to agree to a different rental amount, given he already had a valid tenancy agreement. However, he chose to do so. I do not find this amounts to an improper rent increase, as it is a new tenancy agreement, with new terms. I find monthly rent was \$1,050.00 from February 2021 onwards, as agreed in the most recent tenancy agreement.

I turn to the Notice, which the Tenant acknowledged receiving on January 8, 2022. This Notice indicated that \$3,150.00 was overdue at the time for November, December and January rent. The Tenant does not refute that no payments were made after the Notice was issued.

After receiving the Notice on January 8, 2022, the Tenant had 5 days to pay rent in full or file an application for dispute resolution with a valid reason why he withheld rent. There is no evidence that the Tenant paid the amount in full, or that he had the right to withhold this amount. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. I hereby dismiss the Tenant's application to cancel the Notice.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (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.

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a 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.

I find the Notice complies with section 52 of the *Act*, and the Landlord is entitled to an order of possession, effective two days after service.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. However, at the start of the hearing, the Landlord stated he does not wish to obtain a monetary order, and only wants an order of possession. As such, I decline to issue a monetary order pursuant to section 55 (1.1) of the *Act*.

Conclusion

The Tenant's application to cancel the Notice is dismissed, in full, without leave to reapply.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: February 18, 2022

Residential Tenancy Branch