



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL MANSIONS INVESTMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with two separate Applications for Dispute Resolution filed by the Tenant (the Tenant's Applications). The first Application was filed on October 8, 2021, and the second Application was filed on November 9, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities with an effective date of October 13, 2021 (10 Day Notice #1); and
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities with an effective date of November 14, 2021 (10 Day Notice #2).

This hearing also dealt with a cross-application filed by the Landlord (the Landlord's Application), on November 10, 2021, under the *Act*, seeking:

- An Order of Possession based on 10 Day Notice #2;
- A Monetary Order for unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on February 17, 2022, and was attended by two agents for the Landlord C.N. and R.A. (the Agents). Neither the Tenant nor an agent acting on their behalf attended. All testimony provided was affirmed.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to

hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application for Dispute Resolution, the Notice of Hearing, and the documentary evidence intended to be relied upon by the applicant at the hearing. The Agents stated that neither they nor the Landlord were served with the Tenant's first Application in relation to 10 Day Notice #1, and that they and the Landlord were only served with the Tenant's second Application in relation to 10 Day Notice #2. As the Tenant did not attend the hearing to provide any evidence or testimony regarding service of their Applications, I accept the Agents' affirmed and undisputed testimony and find that the Notice of Dispute Resolution Proceeding (NODRP) package for the Tenant's first Application in relation to 10 Day Notice #1 was not served in accordance with either section 59(3) of the *Act* or rule 3.1 of the Rules of Procedure. I therefore dismiss the Tenant's first Application relating to 10 Day Notice #1. As both the dispute period and the effective date of 10 Day Notice #1 have passed, and section 66(3) of the *Act* prohibits extending the time period to dispute a notice to end tenancy beyond the effective date of the notice, I therefore dismiss the Tenant's first Application relating to 10 Day Notice #1 without leave to reapply.

As the Agents acknowledged service of the NODRP for the Tenant's second Application relating to 10 Day #2, and raised no concerns with regards to the service date or method, I accept that it was served in accordance with the *Act* and the Rules of Procedure.

As the Tenant did not attend the hearing, I also inquired about service of the Landlord's Application and documentary evidence on the Tenant as outlined below. The Agents were exceptionally confused about the timing and method of service and unprepared at the hearing to provide me with accurate and credible service information. Although one of the Agents stated that they were sure the NODRP and documentary evidence had been served, no documentary evidence regarding service of the NODRP and evidence was submitted for my consideration and neither Agent could provide me with a date or method of service, despite being given 33 minutes during the hearing to do so. As a result, I was not satisfied that either the NODRP for the Landlord's Application or the documentary evidence before me from the Landlord had been served on the Tenant in

compliance with the *Act* and the Rules of Procedure. As a result, I dismissed the Landlord's Application seeking an Order of Possession based on 10 Day Notice #2 and a Monetary Order for unpaid rent, with leave to re-apply. The Landlord's claim for recovery of the \$100.00 filing fee was dismissed without leave to reapply. I also excluded the Landlord's documentary evidence from consideration.

I verified that the hearing details shown in the Notice of Hearing for both the Tenant's Applications and the Landlord's Application were correct, and I note that the Agents had no difficulty attending the hearing on time, using this information. 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 former Landlords 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 February 17, 2022. Rule 7.3 of the Rules of Procedure states that if a party or their agent 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. Based on the above, I commenced the hearing as scheduled, despite the absence of the Tenant or an agent acting on their behalf. As the Landlord's Application was dismissed, the hearing proceeded only on the Tenant's second Application relating to 10 Day Notice #2 and the application of section 55(1) and 55(1.1) of the *Act* in relation to both 10 Day Notice #1 and 10 Day Notice #2.

The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. At their request, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address listed in the Landlord's Application.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

During the hearing I asked the Agents if the name listed for the Landlord in the Landlord's Application and the Tenant's Applications was the complete and correct legal name for the corporate Landlord and they stated that it was not. They provided me with the correct and complete spelling, and the Applications were amended accordingly.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of 10 Day Notice #2?

Is the Landlord entitled to an Order of Possession under section 55(1) of the *Act* in relation to either 10 Day Notice #1 or 10 Day Notice #2?

Is the Landlord entitled to unpaid rent pursuant to section 55(1.1) of the *Act*?

Background and Evidence

At the hearing the Agents stated that the periodic (month-to-month) tenancy commenced on March 1, 2021, that rent in the amount of \$1,880.00 was due on the first day of each month, and that a security deposit in the amount of \$940.00 was paid by the Tenant, which the Landlord still holds in trust.

The Agents stated that the Tenant did not pay rent on time and in full, as required, and as a result, two separate notices to end tenancy for unpaid rent were served on the Tenant. Copies of both notices to end tenancy were submitted for my consideration by the Tenant. 10 Day Notice #1 is in writing on a version of the Residential Tenancy Branch (Branch) form, is signed and dated by the Landlord's agent on October 1, 2021, has an effective date of October 13, 2021, and states that the reason for issuance of the notice to end tenancy is that the Tenant has failed to pay \$2,460.00 in outstanding rent due as of October 1, 2021. At the hearing the Agents stated that this includes \$1,880.00 in rent for October 2021, which was due on October 1, 2021, as well as the balance of outstanding rent brought forward for previous months. In the first Application the Tenant states that 10 Day Notice #1 was personally served on them on October 3, 2021, and at the hearing the Agents stated that this was accurate.

10 Day Notice #2 is also in writing on a version of the Branch form, is signed and dated by the Landlord's agent on November 4, 2021, has an effective date of November 14, 2021, and states that the reason for issuance of the notice to end tenancy is that the Tenant has failed to pay \$2,340.00 in outstanding rent due as of November 4, 2021. At the hearing the Agents stated that this includes \$1,880.00 in rent for November 2021, which was due on November 1, 2021, as well as the balance of outstanding rent brought forward for previous months. In the second Application the Tenant states that 10 Day Notice #2 was received by them from their mail slot on November 4, 2021, and at the hearing the Agents stated that it was placed in the Tenant's mail slot that day.

The Agents stated that the Tenant did not have a right under the *Act* to deduct or withhold rent and did not pay the full outstanding amounts owed within 5 days after the dates they were served with the notices to end tenancy. Further to this, the Agents stated that the Tenant has made no rent payments at all for several months, and currently owes \$6,100.00 in outstanding rent for the period up to and including January 31, 2022. The Agents stated that the Tenant even agreed to this amount via email on January 27, 2022. Further to this, the Agents stated that as of the date of the hearing, the Tenant has not paid the \$1,880.00 in rent owed for February of 2022. Based on the above, the Agents sought an Order of Possession for the rental unit as soon as possible, and recovery of \$7,980.00 in outstanding rent for the period up to and including February 2022, less the amount of the security deposit. Although the Agents stated that they think the Tenant moved out of the rental unit on February 16, 2022, the Tenant did not take all of their possessions with them, so they cannot be sure, and they do not know if the Tenant plans to return. As a result, they stated that the Landlord is still seeking an Order of Possession.

Although the teleconference remained open for the duration of the 87 minute hearing, no one called into the teleconference on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies exists between the parties. I am also satisfied that the terms of the tenancy agreement are as summarized in the background and evidence section above.

I am satisfied that 10 Day Notice #1 was personally served on the Tenant on October 3, 2021, and that 10 Day Notice #2 was served on the Tenant on November 4, 2021, as stated by the Tenant in their Applications, and confirmed by the Agents at the hearing. Although I am satisfied based on the above and Branch records that the Tenant filed their Applications seeking cancellation of 10 Day Notice #1 and 10 Day Notice #2 within the five day period set out under section 46(4) of the *Act*, and therefore conclusive presumption does not apply to either notice to end tenancy, the Tenant did not appear at the hearing to present any evidence in support of their Applications. As a result, I accept the uncontested and affirmed testimony before me from the Agents that at the time the notices to end tenancy were served, the Tenant owed not less than the

amounts shown on the notices to end tenancy, that the Tenant did not have a right under the *Act* to deduct or withhold these amounts, and that the Tenant did not pay the outstanding amounts owed within the legislative time period set out under section 46(4) of the *Act*. As a result, I dismiss the Tenant's second Application seeking cancellation of 10 Day Notice #2. I also accept the Agents' affirmed and undisputed testimony that the Tenant has not paid rent in a number of months and currently owes \$6,100.00 in outstanding rent for the period up-to and including January 31, 2022, and that the Tenant has not paid any rent for February 2022.

Both of the Tenant's Applications seeking cancellation of the notices to end tenancy were dismissed, I am satisfied that both notices to end tenancy comply with the form and content requirements set out under section 52 of the *Act*, and I am satisfied that the Landlord had grounds to serve the notices to end tenancy for unpaid rent and to end the tenancy pursuant to section 46 of the *Act*, as set out above. Based on the above and Pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #3, I find that the tenancy is therefore ended as of February 17, 2022, the date of the hearing, and I therefore grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*, effective two (2) days after service on the Tenant.

Pursuant to sections 26 and 55(1.1) of the *Act* and Policy Guideline #3, I also grant the Landlord the following amounts for outstanding rent:

- \$6,100.00 in outstanding rent for the period up to an including January 31, 2022, and
- \$1,141.43 in per diem rent for February 1, 2022 – February 17, 2022 (the date I have determined that the tenancy ended), calculated as follows: \$1,880.00/28 days x 17 days.

If the Landlord suffered a further loss of rent after February 17, 2022, as a result of the Tenant overholding the rental unit after February 17, 2022, or for another reason, they remain entitled to file an Application for Dispute Resolution with the Branch seeking recovery of those amounts from the Tenant, should they wish to do so.

Conclusion

Pursuant to sections 55(1.1) and 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$6,301.43** (\$7,241.43 in outstanding rent, less the \$940.00 security deposit), and I order the Tenant to pay this amount to the Landlord. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this**

Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession for the rental unit effective **Two (2) days after service on the Tenant**. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and 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 23, 2022

Residential Tenancy Branch