



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wynn Real Estate Ltd. and Ahn Holdings LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT
OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning applications made by the tenant and by the landlord.

The tenant has applied for an order cancelling a One Month Notice to End Tenancy for Cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant. The landlord's application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenant's application. An Interim Decision dated January 4, 2022 was provided to the landlord.

The landlords named in the 2 applications differ, and the landlord was represented at the hearing by an agent, who gave affirmed testimony and provided evidentiary material in advance of the hearing. One of the landlords is the property manager for the other, and a copy of a Property Management Agreement dated January 29, 2020 has been provided for this hearing.

The line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Dispute Resolution Hearing and other required documents (the Hearing Package) by registered mail on January 4, 2022, as well as the evidentiary material, and has provided a copy of

a Canada Post tracking document confirming that testimony. The Interim Decision dated January 4, 2022 requires the landlord to serve the Hearing Package to the tenant within 3 days of receiving the Interim Decision. I find that the landlord has done so, and the tenant has been served in accordance with the *Residential Tenancy Act* and the Interim Decision.

Since the tenant has not attended the hearing, and the landlord attended prepared to respond to the tenant's application, I dismiss the tenant's application in its entirety without leave to reapply.

The tenant has not provided any evidentiary material, and all evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on May 1, 2017 and reverted to a month-to-month tenancy after May 31, 2018, and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 was payable on the 1st day of each month. On April 10, 2017 the landlord collected a security deposit from the tenant in the amount of \$750.00.

The rental unit is an apartment in a complex, and a copy of a tenancy agreement has been provided for this hearing for unit #4. However, the previous property manager and the tenant signed an Addendum showing that the tenancy moved from unit #4 to unit #11, and since it's a bigger unit, the Addendum provides for rent in the amount of \$2,400.00 per month, and the tenant paid an additional \$450.00 toward the security deposit. The amount of the security deposit in the Addendum is \$1,200.00. Also, the Addendum provides for a fixed term ending on April 30, 2020.

On October 7, 2021 the landlord's agent served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit and a copy has been provided for this hearing. It is dated October 7, 2021 and contains an effective date of vacancy of November 30, 2021. The reason for issuing it states: Tenant is repeatedly late paying rent.

On November 5, 2021 the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. It is dated November 5, 2021 and contains an effective date of vacancy of November 18, 2021, for unpaid rent in the amount of \$2,400.00 that was due on November 1, 2021. However, the landlord's agent testified that the amount was meant for the month of November only, and has provided a Monetary Order Worksheet setting out the following claims of unpaid rent prior to and since November 1, 2021, totaling \$12,827.00:

- \$800.00 for September, 2021 rent;
- \$2,400.00 for October, 2021 rent;
- \$2,400.00 for November, 2021 rent;
- \$2,400.00 for December, 2021 rent;
- \$2,436.00 for January, 2022 rent; and
- \$2,436 for February, 2022 rent.

A Notice of Rent Increase was served to the tenant on September 24, 2021 by posting it to the door of the rental unit that day. The landlord's agent testified that it increased rent by \$36.00 from \$2,400.00 to \$2,436.00 effective January 1, 2022. The landlord was permitted to provide proof of the Notice after the hearing had concluded. I now have a copy, and it is signed by the landlord's agent.

The tenant is currently in arrears of rent the sum of \$12,827.00, having not paid any rent since September, 2021, leaving \$800.00 outstanding for that month. Numerous emails and some e-transfer documents have been provided for this hearing.

The tenant served the landlord with documents disputing the One Month Notice to End Tenancy for Cause, but has not served the landlord with notice of disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

Where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice. If the tenant

does neither, the tenant is conclusively presumed to have accepted the end of the tenancy, and must vacate the rental unit within 10 days of service. In this case, the tenant disputed the One Month Notice to End Tenancy for Cause, however the landlord also served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord's agent testified that the landlord has not been served with an application disputing that Notice, and I have no such application before me. The landlord's agent also testified that the rent has not been paid. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I have also reviewed the emails and other documentation provided by the landlord, and I am satisfied that the tenant is in arrears of rent the sum of \$12,872.00. I also find that there is an arithmetic error in the landlord's Monetary Order Worksheet, transposing some figures.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has not applied for an order permitting the landlord to keep any part of the security deposit in partial satisfaction of the claim for unpaid rent, and I make no orders with respect to the security deposit.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$12,972.00. The order may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$12,972.00.

This order is final and binding and may be enforced.

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 22, 2022

Residential Tenancy Branch