



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARRERA MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, OLC, CNR

Introduction

This hearing dealt with cross applications filed by the Tenant. On December 9, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On January 10, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Act* and seeking another Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing. J.G. attended the hearing as an agent for the Landlord, and L.M. attended the hearing as counsel for the Landlord. At the outset of the hearing, 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, they were reminded to refrain from doing so, and all parties acknowledged these terms. As well, all parties in attendance, with the exception of L.M., provided a solemn affirmation.

The Tenant advised that he served the two, separate Notice of Hearing and evidence packages to the Landlord by email, but he was not sure when he did this. L.M. confirmed that the Landlord received these packages on December 10, 2021, and January 19, 2022 respectively, and she had no position regarding how they were served. As well, she indicated that the Landlord also received additional evidence from the Tenant on February 10 and 18, 2022. Based on this undisputed testimony, I am satisfied that the Landlord has been duly served the Notice of Hearing and evidence packages. Given that L.M. has acknowledged that the Landlord has received all of the Tenant's evidence, I have accepted this and will consider it when rendering this Decision.

L.M. advised that the Landlord's evidence was served to the Tenant on February 18, 2022 by email and this would be the only evidence that she would be relying on. The Tenant confirmed that he received this evidence, and he had no position with respect to how it was served. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

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 Landlord's notices to end tenancy cancelled?
- Is the Tenant entitled to more time to cancel the Landlord's first notice to end tenancy?
- If the Tenant is unsuccessful in cancelling the notices to end tenancy, 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 on January 1, 2021, that rent was established at \$1,400.00 per month, and that it was due on the first day of each month. A security deposit of \$700.00 was paid. They also agreed that on or around February 15, 2021, the Tenant entered into a work in lieu of rent agreement where the Tenant would complete tasks as the building manager instead of paying the \$1,400.00 per month rent. A copy of the signed tenancy agreement and the signed work in lieu of rent agreement was submitted as documentary evidence.

L.M. advised that the first 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant by hand on December 2, 2021. She stated that the Notice was served because \$1,400.00 was in arrears and was due on December 1, 2021 because the work in lieu of rent agreement ended on November 15, 2021.

The Tenant acknowledged that he received this on December 2, 2021 and he advised that the reason he did not dispute this on time was because of his mistaken belief that he had five business days to do so. The Tenant was informed that he was conclusively presumed to have accepted this first Notice and his first Application was dismissed in its entirety.

L.M. advised that the second 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant by email on January 6, 2022, and the Tenant confirmed that he received this. She stated that the Notice was served because \$2,800.00 was now in arrears and was due on January 1, 2022. The effective end date of the tenancy was noted on the Notice as January 19, 2022.

She submitted that the Tenant's work in lieu of rent agreement was terminated on November 15, 2021 and therefore the Tenant was expected to pay rent again as of December 1, 2021. She referenced a letter submitted as documentary evidence to support this. She stated that the Tenant failed to pay rent for December 2021 and January 2022, thus the notices were served. In addition, the Tenant has failed to pay any rent up until the date of the hearing.

The Tenant advised that his hours of work as a building manager became excessive, and he completed tasks associated with this position in excess of the 65 hours per month designated by the work in lieu of rent agreement. He indicated that he was to be paid \$15.00 per hour for tasks associated with this position, and \$20.00 per hour for tasks associated with this position in excess of the 65 hours per month. As such, it is his position that the excess hours that he accrued should be accounted for rent owing past his termination date. However, he did not keep track of his hours worked. In addition, he stated that he also took up another position with the company for a few months, but this was not related to his work in lieu of rent agreement.

He referenced a Record of Employment which he believes notes how many hours he worked for the Landlord; however, he cannot attribute how many of these hours pertained to this role as the building manager and how many hours pertained to his other role which was not related to his work in lieu of rent agreement.

L.M. referenced clause 4 of the work in lieu of rent agreement where it stated that “We ask that there be an open dialogue when you are working additional hours.” and “However, should there be any additional hours, please let the office know and those hours can be billed separately at a rate of \$20.00 per hour.” She submitted that the Tenant never made a request to complete any extra hours, that he did not submit any indication to the Landlord that he completed extra hours, and that the first time the Landlord was aware of this extra time was when the Tenant made these Applications.

The Tenant advised that he would simply receive calls from the Landlord or other residents of the building, and that he was expected to do the work.

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 1 of the *Act* defines rent as “money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.”

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.

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.

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, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to 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.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Tenant was permitted to complete building manager duties in lieu of rent, that this agreement started on or around February 15, 2021, that this agreement ended on or around November 15, 2021, and that rent would then be due in full on December 1, 2021.

While the Tenant claimed that he worked in excess of the 65 hours per month completing building manager duties, and thus should have been credited with monies owing towards future months of rent, I note that the Tenant failed to log any his hours of work to corroborate this position. Though he relied on the submitted Record of Employment to indicate his hours worked for the Landlord, I am not satisfied that he was accurately and definitively able to demonstrate which of those hours reflected the time spent completing duties associated with his building manager role. Furthermore, I accept that the building manager position agreement stated that the Tenant was "not expected to work outside of the 65 hours per month" and that "should there be an emergency/need to put in additional hours, please let the office know and those hours can be billed separately at a rate of \$20.00 per hour."

Given that the Tenant did not have any documentary evidence to substantiate that he had permission from the Landlord to conduct duties above the 65 hours per month, I am not satisfied that the Tenant has established that he completed building manager

related tasks in excess of the required 65 hours per month, and that he had thus accumulated a credit towards future rent. I find that I prefer the Landlord's evidence that the work in lieu of rent agreement was terminated on November 15, 2021, and as a result, rent was then due as of December 1, 2021 as per the terms of the tenancy agreement.

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. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent 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 undisputed evidence is that the Tenant received the second Notice on January 6, 2022, he must have paid the rent in full or disputed the Notice on January 11, 2022 at the latest. While the Tenant did not pay the amount on the Notice to cancel it, the Tenant did dispute the Notice on January 10, 2022. However, while the Tenant disputed this Notice, I do not find that he had any valid reason under the *Act* for withholding the rent. Given that I am not satisfied that the Tenant had any authority under the *Act* to withhold the rent, I find that the Tenant breached the *Act* and jeopardized his 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*. I grant the Landlord an Order of Possession effective **two days** after service of this Order on the Tenant.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rental arrears from December 2021 to March 2022. As such, I grant the Landlord a monetary award in the amount of **\$5,600.00**. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for December 2021	\$1,400.00
Rental arrears for January 2022	\$1,400.00
Rental arrears for February 2022	\$1,400.00
Rental arrears for March 2022	\$1,400.00
Security deposit	-\$700.00
Total Monetary Award	\$4,900.00

Conclusion

The Tenant's Applications for Dispute Resolution are dismissed without leave to reapply. Furthermore, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$4,900.00** 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.

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: March 28, 2022

Residential Tenancy Branch