



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant; and
- a monetary order for unpaid rent.

This dispute began as an application made on January 5, 2022, via the non-participatory, ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated February 4, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the participatory teleconference hearing, the landlord's agents (agents), the tenant, and the tenant's advocate attended. The parties were affirmed, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties affirmed they were not recording the hearing.

The parties did not raise an issue with regard to service of the application or the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

During the hearing, the landlord's agent confirmed that the tenant was fully current in his monthly rent obligation. I therefore did not consider the landlord's request for a monetary order for unpaid monthly rent.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent owed under the written tenancy agreement?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on January 1, 2015 and the monthly rent is geared to income, due on the first day of the month. The agent testified that the tenant's current monthly rent obligation is \$671.

The agent, MC, testified that on December 6, 2021, he serve the tenant with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$604, owed as of December 1, 2021. The effective vacancy date listed on the Notice was December 20, 2021. Filed in evidence was a copy of the Notice and a signed, witnessed proof of service of the Notice.

The agent stated that the tenant did not vacate the rental unit and did not pay the amount listed on the Notice within 5 days. The agent said that the tenant had a credit of \$67, which carried over to December, 2021, leaving a rent deficiency of \$604 for that month. The agent submitted that the rent deficiency of \$604 was paid on December 24, 2021. For this reason, the landlord requests an order of possession of the rental unit.

Additional evidence filed by the landlord included letters acknowledging the tenant's monthly rent payments, listing "For Use and Occupancy".

Tenant's statement –

In response to my inquiry, the tenant testified that he did not receive the Notice as it was not attached to his door.

Tenant's advocate's submissions –

The advocate submitted that it does not make sense that the tenant would be served the Notice and not dispute it. The advocate submitted that it is therefore reasonable to assume the tenant did not get the Notice. The advocate said that the witnessed and signed proof of service is not reliable as the parties involved are just two people working for the landlord.

The advocate submitted that the landlord usually serves the tenant documents by registered mail, so it would be logical to believe that the Notice would be served by registered mail, not posted to the door.

The advocate submitted if the tenancy is over, as here, on December 19, 2021, by operation of the Notice, the landlord cannot just keep accepting rent. This shows that the tenancy was reinstated, as the tenant did not receive "for use and occupancy" receipts.

The advocate submitted that the tenancy is professionally managed and that their words in the letters to the tenant have meaning. The advocate referred to the tenant's evidence, which showed an undated letter sent by the landlord to the tenant, entitled, Re: "FOR USE AND OCCUPANCY ONLY" Notice. The body of the letter thanked the tenant for his December rent payment of \$604 received on January 10th, 2022. Further, the letter said "Please be advise that your payment is received as "FOR USE AND OCCUPANCY ONLY" until you fully pay the account arrears.

The advocate submitted that this letter should be interpreted to show that once a payment is made, this establishes reinstatement of the tenancy. The advocate submitted that the landlord is prohibited from coming to a hearing and asking for an order of possession of the rental unit due to the principle of "promissory estoppel".

The advocate pointed out that the landlord's subsequent letters for Use and Occupancy" did not have that same language.

The advocate submitted that the warning letters sent to the tenant this year referred to him as "tenant", instead of occupant.

The advocate's additional evidence included a previous dispute resolution Decision involving the parties, emails from the Rent Bank, other Use and Occupancy receipts, notices/warning letters to the tenant, and bank account drafts for rent.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have reviewed the Notice and find it complies with the statutory requirements under section 52 of the Act.

While acknowledging the tenant's evidence that there may have been past and present issues between the parties, the only relevant issues before me are whether the Notice was served upon the tenant, whether rent was owed on the day the Notice was issued, and whether rent was paid within 5 days of receiving the Notice. As the matter of reinstatement of the tenancy was raised by the tenant's advocate, I will also address that issue.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

The landlord submitted that they served the Notice to the tenant on December 6, 2021, by attaching the Notice to the tenant's door. While the tenant denied receiving the Notice, the landlord's agent provided affirmed testimony that he attached the Notice on

that date. The landlord also provided a signed, witnessed “Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities”, RTB form 34. The Proof of Service provided detailed information, which included the time of service.

While the advocate argued that it was not likely that the landlord served the tenant by attachment to the door, the tenant’s evidence included a previous dispute resolution Decision, dated May 7, 2021, between the parties. The application dealt with the tenant’s request to cancel the landlord’s One Month Notice to End Tenancy for Cause. In that Decision, the tenant said the 1 Month Notice was served by the landlord when it was posted to the door.

I therefore find that between the landlord’s agent’s testimony and the signed, witnessed Proof of Service, the landlord has proven on a balance of probabilities, in other words, that it is more likely than not, the landlord attached the Notice to the tenant’s door on December 6, 2021, as claimed. Under section 90 of the Act, I find the tenant was deemed to have received the Notice on December 9, 2021. The tenant therefore had until December 14, 2021, to pay the outstanding rent in full or file an application in dispute of the Notice.

I find the undisputed evidence is that the monthly rent was owed, but not paid, until December 24, 2021, and there was no evidence before me that the tenant applied to dispute the Notice.

In consideration of the tenant’s advocate’s argument that the landlord was estopped from enforcing the Notice as the tenancy was reinstated by the landlord’s actions, I find they were not.

The Act does not address reinstatement of the tenancy and there is no legal requirement that the landlord issue the tenant a receipt for use and occupancy only. I find the only legal requirement under the Act in this regard is that the tenant **must** vacate the rental unit by the effective date if they do not pay the rent in full or file an application for dispute resolution within 5 days of receiving the Notice.

Despite this finding, I have considered Tenancy Policy Guideline 11 regarding reinstatement of a tenancy. This Guideline provides guidance to establishing an implied waiver. One way implied waiver could be shown as reinstating a tenancy is when a landlord collects rent after the effective date, but fails to issue a receipt for “use and occupancy only”. There are other ways under this Guideline, however, to establish an

implied waiver, which is whether or not the landlord has withdrawn their application for dispute resolution seeking to enforce the notice to end a tenancy or has cancelled the dispute resolution proceeding or the conduct of the parties.

Clearly the landlord has not cancelled or withdrawn their application, and instead, continued to issue the tenant letters that the rent payment received was for use and occupancy only.

I do not find that the undated letter referred to in the tenant's evidence regarding the December rent payment being received shows that the tenancy was reinstated. I find this letter neither convincing nor compelling. The letter referred to the December rent being received on January 10, 2022, when the evidence from the landlord was that it paid on December 24, 2021. Further, that letter suggested there were still outstanding account arrears, in my view.

As to the assertion that the landlord continued to accept rent from the tenant, showing that the landlord still considered him a tenant, under section 57(3) a landlord may claim compensation from an overholding tenant who continues to occupy the rental unit after the tenant's tenancy ended. I do not find acceptance of monthly payments from the tenant while the tenant occupies the rental unit reinstated the tenancy.

For these reasons, I find the tenant submitted insufficient evidence to show that the landlord reinstated the tenancy by accepting monthly rent after the effective date of the Notice.

As I have found the tenant was deemed to have received the Notice on December 9, 2021, did not pay the monthly rent or file an application for dispute resolution within 5 days, under section 46(5) of the Act, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date, in this case, December 20, 2021.

As a result, I order the tenancy ended on December 20, 2021.

As this date has now passed, and as the tenant paid for his use and occupancy of the rental unit for May 2022, the landlord is entitled to, and **I grant, an order of possession of the rental unit effective at 1:00 pm on May 31, 2022.**

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit is granted.

The landlord is issued an order of possession of the rental unit effective at 1:00 pm on May 31, 2022.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 4, 2022

Residential Tenancy Branch