



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0795141 BC LIMITED DBA. CORONADA
APARTMENTS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, LAT, OLC, FFT
OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order limiting or setting conditions on the landlord's right to enter the rental unit; an order permitting the tenant to change the locks to the rental unit; 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 by way of the Direct Request process 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 has been referred to this participatory hearing, joined to be heard with the tenant's application.

The tenant and the landlord (JS) attended the hearing, and the landlord was accompanied by Legal Counsel. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the landlord's Legal Counsel submitted that the landlord was not served with the tenant's dispute package, and the landlord had applied by way of the Direct Request process and learned after filing that the tenant had disputed the notice to end the tenancy. That was not disputed by the tenant, who submitted that he had not served the landlord. Since the tenant has not served the landlord, I dismiss the tenant's application in its entirety without leave to reapply, and the hearing focused on the landlord's application.

Issue(s) to be Decided

- 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 testified that this fixed term tenancy began on September 1, 2017 and reverted to a month-to-month tenancy after August 31, 2018, and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided for this hearing which states that rent in the amount of \$1,595.00 was payable on the first day of each month, however the landlord testified that rent has been increased and is now \$1,716.37 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$797.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing a total of 8 suites.

The landlord further testified that on May 2, 2022 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. It is dated 02/05/2022 and contains an effective date of vacancy of 05/15/2022. The form shows that the date order shall be “DD/MM/YYYY” and the landlord testified that the landlord’s accountant advised that he put in the right date but the form reversed the month and the day. The landlord’s signature and date are correct on the form, and it was served by placing it in the mailbox outside the tenant’s door.

The tenant is now in arrears the sum of \$1,716.37 for each of the months of May, June, July, August and September, 2022.

The parties had attended a hearing before the Residential Tenancy Branch on March 14, 2022 and a copy of the resulting Decision dated March 16, 2022 has been provided for this hearing. At the previous hearing the parties agreed that rent would be paid by midnight on the 1st of each month by cheque or bank draft, but no rent has been paid for May, 2022. Copies of other notices to end the tenancy have also been provided for this hearing.

The tenant testified that the landlord had advised that the landlord would have the tenant removed one way or another. After the hearing on March 14, 2022, the tenant

thought it was over, however the tenant paid the rent in cash by placing the money in an envelope and the tenant put it through the landlord's door on May 1, 2022. The bank was closed when the tenant got off work, so rather than waiting until May 2 to give a bank draft, the tenant put the cash through the door to avoid being late.

The tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 2, 2022. The tenant also agrees that no rent has been paid since; the tenant stopped paying rent.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenant testified that he got the Notice on May 2, 2022, and the tenant's application for dispute resolution indicates that the tenant filed the dispute on May 9, 2022, which is beyond the 5 days permitted by law, and did not serve the landlord. The day and month are switched in the documentation, however both parties testified that it was served on May 2, 2022. If the tenant wishes to provide evidence of having paid rent in May, he can apply for monetary compensation to recover it, however, the landlord has not received any rent.

SUBMISSIONS OF THE TENANT:

May's rent was paid in cash, and no one, other than the landlord, has access to that room. The landlord said that the landlord would have the tenant removed one way or another, and served several notices about inspections and other issues. It's obvious that the landlord is doing so.

Analysis

Firstly, the landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served by placing it in the mailbox outside the tenant's rental unit on May 2, 2022, which is deemed to have been served 3 days later, or May 5, 2022. Regardless of what date the tenant actually received it, the tenant made the application on May 9, 2022, which is within the 5 day requirement under the *Residential Tenancy Act*.

However, the *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form. I also accept the undisputed testimony of the landlord that the day and month are switched in the form. Where an effective date of vacancy is incorrect, the law states that it is changed to the

nearest date that complies with the *Act*, which in this case is changed. Since the Notice was deemed to have been served on May 5, 2022, the nearest effective date of vacancy that complies with the *Act* is May 15, 2022. Having dismissed the tenant's application, and having found that the Notice is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the landlord's monetary claim, the tenant agrees that no rent has been paid for June through September, 2022. However, I accept the testimony of the landlord that the tenant has not paid rent for May either, and is in arrears of rent the sum of \$1,716.37 for each of the months of May through September, 2022, which amounts to \$8,581.85. I grant a monetary order in that amount in favour of the landlord.

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

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 \$8,681.85.

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: September 15, 2022

Residential Tenancy Branch