



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM AS AGENT FOR PACIFIC COVE ISLAND
PROPERTIES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, OLC, FFT
OPR-DR

Introduction

This hearing was scheduled to convene at 9:30 a.m. on November 01, 2022 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 that the landlord make repairs to the rental unit or property; 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 for unpaid rent or utilities, which was referred to this participatory hearing, joined to be heard with the tenant's application.

An agent for the landlord attended the hearing and gave affirmed testimony. However, 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. Therefore I dismiss the tenant's application in its entirety without leave to reapply.

The landlord's agent testified that the tenant was served with the landlord's hearing package by registered mail on October 12, 2022 and has provided a Registered Domestic Customer Receipt and Canada Post cash register receipt bearing that date.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 4, 2021 and reverted to a month-to-month tenancy after September 30, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 was payable on the 1st day of each month, which was raised to \$1,370.00 per month by way of a Notice of Rent Increase effective October 1, 2022. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$675.00 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 roughly 50 units, and the landlord's agent does not reside on the property. Copies of the tenancy agreement and Notice of Rent Increase have been provided as evidence for this hearing.

The landlord's agent further testified that the tenant has been served with 3 notices to end the tenancy for unpaid rent and copies have been provided for this hearing. The first is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 9, 2022 and contains an effective date of vacancy of August 22, 2022 for unpaid rent in the amount of \$1,350.00 that was due on August 1, 2022. The landlord's agent testified that it was served by posting it to the door of the rental unit on August 9, 2022 and a Proof of Service document has also been provided with a witness statement.

The second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated September 2, 2022 with an effective date of vacancy of September 15, 2022 for unpaid rent in the amount of \$1,350.00 that was due on September 1, 2022. It was also served by posting it to the door of the rental unit on September 2, 2022. A Proof of Service document has been provided for this hearing, which also contains a witness statement.

The third 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated October 4, 2022 with an effective date of vacancy of October 17, 2022 for unpaid rent in the amount of \$1,370.00 that was due on October 1, 2022. It was also served by posting it to the door of the rental unit on September 2, 2022. A Proof of Service document has been provided for this hearing, which also contains a witness statement. The landlord's agent testified that the tenant is currently in arrears of rent the sum of \$4,070.00 and November's rent of \$1,370.00 is also due.

Analysis

The *Residential Tenancy Act* specifies that a tenant must pay rent when it is due. In this case, I accept the undisputed testimony of the landlord's agent that the tenant has failed to pay rent for the months of August, September or October, 2022.

The *Act* also specifies that where a party makes an Application for Dispute Resolution, the party must serve the Notice of Dispute Resolution Proceeding to the other party within 3 days of making the application. In this case, the landlord received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch on September 9, 2022 but didn't serve the tenant until October 12, 2022, which is well beyond the 3 day period.

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 all of the notices given by the landlord, and I find that all are in the approved form and contain information required by the *Act*. Having dismissed the tenant's application, I grant an Order of Possession in favour of the landlord. Since all effective dates of vacancy have passed, and no rent has been received by the landlord, I grant the Order of Possession effective on 2 days notice to the tenant. The tenant must be served with the Order of Possession, which may be filed in the Supreme Court of British Columbia and enforced.

The *Act* also specifies:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I accept the undisputed testimony of the landlord's agent that the tenant is in arrears of rent the sum of \$4,070.00 and the landlord is entitled to recover that amount from the tenant. Rent is also due for the month of November, 2022 in the amount of \$1,370.00, and I find that the landlord is also entitled to recover of that amount from the tenant.

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

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$5,540.00. The tenant must be served with the order, which 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 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 \$5,540.00.

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: November 02, 2022

Residential Tenancy Branch