



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR OPR-DR MNR-DR FFL**

Introduction

This hearing was convened by way of conference call in response to two applications for dispute resolution (collectively the “Applications”) made by the Landlord under the *Residential Tenancy Act* (the “Act”). In the first application for dispute resolution (“First Application”), the Landlord seeks:

- an order of possession for unpaid rent and/or utilities based on a Ten Day Notice for Unpaid Rent and/or Utilities dated July 7, 2022 (“First 10 Day Notice”) pursuant to section 55(4)(a); and
- authorization to recover the filing fee for the First Application from the Tenants pursuant to section 72.

In the second application for dispute resolution (“Second Application”), the Landlord seeks:

- an order of possession for unpaid rent and/or utilities based on a Ten Day Notice for Unpaid Rent and/or Utilities dated November 2, 2022 (“Second 10 Day Notice”) pursuant to section 55(4)(a);
- a monetary order for unpaid rent and/or utilities pursuant to section 55(4)(b); and
- authorization to recover the filing fee for the Second Application from the Landlords pursuant to section 72.

The Landlord’s agent (“IB”) and one of the two Tenants (“BD”) attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Withdrawal of First Application by Landlord

At the outset of the hearing, IB stated the Landlord with withdrawing the First Application. As such, I dismiss the First Application without leave to reapply.

Service of Notice of Dispute Resolution Proceeding for Second Application

IB stated the Notice of Dispute Resolution Proceeding and the Landlord's evidence for the Second Application (collectively the "NDRP Package") was served on each of the Tenants by registered mail on November 24, 2022. IB provided the Canada Post tracking numbers for service of the NDRP Package on each of the Tenants. BD acknowledged each of the Tenants received the NDRP Package. As such, I find the NDRP Package was served on each of the Tenants pursuant to sections 88 and 89 of the Act.

BD stated the Tenants did not serve any evidence on the Landlord for these proceedings.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a monetary order for unpaid rent and/or utilities?
- recovery of the filing fee for the Application from the Tenants?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Second Application are set out below.

IB submitted into evidence a copy of the tenancy agreement ("Tenancy Agreement"), dated July 1, 2020, between the Landlord and Tenants. The Tenancy Agreement stated

the tenancy commenced on July 1, 2020, for a fixed term ending June 30, 2021, with rent of \$1,700.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$850.00 by July 1, 2020. IB acknowledged the Landlord received the security deposit from the Tenants and that it was holding the deposit in trust for the Tenants. Based on the foregoing, I find there was a tenancy between the parties and that I have jurisdiction to hear the First and Second Applications.

IB stated the Second 10 Day Notice was served on the Tenants' door on November 2, 2022. IB submitted into evidence a signed and witnessed Proof of Service on Form RTB-34 to corroborate her testimony on service of the Second 10 Day Notice on the Tenants. I find the Second 10 Day Notice was served on the Tenants in accordance with the provisions of section 88 of the Act.

The Second 10 Day Notice stated the Tenants had rental arrears of \$2,300.00 as of November 1, 2022, calculated as follows:

| Date | Rent Owed | Paid | Balance |
|-------------------|------------------------|-------------|----------------|
| November 1, 2020 | \$1,700.00 | | \$1,700.00 |
| November 3, 2020 | | \$1,200.00 | \$500.00 |
| December 1, 2020 | \$1,700.00 | | \$2,200.00 |
| December 2, 2020 | | \$1,700.00 | \$500.00 |
| January 1, 2021 | \$1,700.00 | | \$2,200.00 |
| February 1, 2021 | \$1,700.00 | | \$3,900.00 |
| February 2, 2021 | | \$1,400.00 | \$2,500.00 |
| February 11, 2021 | | \$1,700.00 | \$800.00 |
| March 1, 2021 | -\$150.00 ¹ | | \$650.00 |
| March 1, 2021 | \$1,700.00 | | \$2,350.00 |
| March 8, 2021 | | \$1,550.00 | \$800.00 |
| April 1, 2021 | -\$150.00 ² | | \$650.00 |
| April 1, 2021 | \$1,700.00 | | \$2,350.00 |
| April 5, 2021 | | \$1,850.00 | \$500.00 |
| May 1, 2021 | -\$150.00 ³ | | \$350.00 |
| May 1, 2021 | \$1,700.00 | | \$2,050.00 |
| May 3, 2021 | | \$1,550.00 | \$500.00 |
| June 1, 2021 | -\$150.00 ⁴ | | \$350.00 |
| June 1, 2021 | \$1,700.00 | | \$2,050.00 |
| June 9, 2021 | | \$1,000.00 | \$1,050.00 |
| July 1, 2021 | -\$150.00 ⁵ | | \$900.00 |

| | | | |
|--------------------|------------------------|------------|------------|
| July 1, 2021 | \$1,700.00 | | \$2,600.00 |
| July 2, 2021 | | \$550.00 | \$2,050.00 |
| July 9, 2021 | | \$1,550.00 | \$500.00 |
| August 1, 2021 | \$1,700.00 | | \$2,200.00 |
| August 10, 2021 | | \$1,350.00 | \$850.00 |
| September 1, 2021 | \$1,700.00 | | \$2,550.00 |
| September 23, 2021 | -\$150.00 ⁶ | | \$2,400.00 |
| October 1, 2021 | \$1,700.00 | | \$4,100.00 |
| October 4, 2021 | | \$1,400.00 | \$2,700.00 |
| November 1, 2021 | \$1,700.00 | | \$4,400.00 |
| November 2, 2021 | | \$2,000.00 | \$2,400.00 |
| November 12, 2021 | | \$1,350.00 | \$1,050.00 |
| November 25, 2021 | | \$350.00 | \$700.00 |
| December 1, 2021 | \$1,700.00 | | \$2,400.00 |
| December 9, 2021 | | \$1,400.00 | \$1,000.00 |
| January 1, 2022 | \$1,700.00 | | \$2,700.00 |
| January 7, 2022 | | \$1,700.00 | \$1,000.00 |
| February 1, 2022 | \$1,700.00 | | \$2,700.00 |
| February 4, 2022 | | \$1,700.00 | \$1,000.00 |
| March 1, 2022 | \$1,700.00 | | \$2,700.00 |
| March 4, 2022 | | \$1,500.00 | \$1,200.00 |
| April 1, 2022 | \$1,700.00 | | \$2,900.00 |
| April 4, 2022 | | \$950.00 | \$1,950.00 |
| April 22, 2022 | | \$900.00 | \$1,050.00 |
| May 1, 2022 | \$1,700.00 | | \$2,750.00 |
| May 2, 2022 | | \$1,700.00 | \$1,050.00 |
| May 13, 2022 | | \$500.00 | \$550.00 |
| June 1, 2022 | \$1,700.00 | | \$2,250.00 |
| June 2, 2022 | | \$1,700.00 | \$550.00 |
| July 1, 2022 | \$1,700.00 | | \$2,250.00 |
| July 4, 2022 | | \$1,200.00 | \$1,050.00 |
| July 20, 2022 | | \$470.00 | \$580.00 |
| August 1, 2022 | \$1,700.00 | | \$2,280.00 |
| August 5, 2022 | | \$1,700.00 | \$580.00 |
| September 1, 2022 | \$1,700.00 | | \$2,280.00 |

| | | | |
|-------------------|--------------------|--------------------|-------------------|
| September 2, 2022 | | \$1,680.00 | \$600.00 |
| October 1, 2022 | \$1,700.00 | | \$2300.00 |
| October 7, 2022 | | \$999.99 | \$1,300.01 |
| October 7, 2022 | | \$700.01 | \$600.00 |
| November 1, 2022 | \$1,700.00 | | \$2,300.00 |
| Total: | \$37,400.00 | \$35,100.00 | \$2,300.00 |

- 1 Rent reduction for March 1, 2021
- 2 Rent reduction for April 1, 2021
- 3 Rent reduction for May 1, 2021
- 4 Rent reduction for June 1, 2021
- 5 Rent reduction for July 1, 2021
- 6 Rent reduction missed for August 1, 2021

IB stated the Tenants have not paid the rent for December 2022 and now have rental arrears of \$4,000.00.

IB stated he lost his job several months ago and that his wife is working part-time.

Analysis

Sections 26 and 46(1) through 46(5) of the Act state:

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.
- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

BD acknowledged the Tenants received the Second 10 Day Notice and that the Tenants did not make an application for dispute resolution to dispute the Second 10 Day Notice. Although the Tenants did not dispute the Second 10 Day Notice, the Landlord is nevertheless required to demonstrate the Second 10 Day Notice was issued for a valid reason.

The Tenants were regularly late paying the rent for November 2020 to October 2022, being a total of 24 months. RB did not provide any testimony, or submit any evidence, that the Landlord had served the Tenants with a written notice that the Landlord would be strictly enforcing the terms of the tenancy agreement and, in particular, that the Tenants would henceforth be required to pay the rent in full on time.

The legal concept of estoppel has been addressed in a recent decision of the B.C. Supreme Court, *Guevara v. Louie*, 2020 BCSC 380. The presiding Judge, the Honourable Mr. Justice Sewell, wrote as follows:

[62] ... Therefore, the proper question was whether Ms. Louie could rely on past instances of rent not being paid on the first of the month to terminate the tenancy agreement when for years she had acquiesced in the manner that rent was paid. Specifically, had Ms. Louie represented through her conduct and communications that she did not require strict

compliance with the term of the tenancy agreement stating that rent must be paid on the first day of the month.

[63] While the legal test of waiver requires a "clear intention" to "forgo" the exercise of a contractual right, the equitable principle of estoppel applies where a person with a formal right "represents that those rights will be compromised or varied:" *Tymchuk v. D.L.B. Properties*, 2000 SKQB 155 at paras. 11-17. Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather "whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it:" *Bowen v. O'Brien Financial Corp.*, 1991 Canlll 826 (BC CA), [1991] B.C.J. No. 3690 (C.A.)...

[65] The following broad concept of estoppel, as described by Lord Denning in *Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd.* (1981), [1982] Q.B. 84 (Eng. C.A.), at p. 122, was adopted by the Supreme Court of Canada in *Ryan v. Moore*, 2005 sec 38 at para. 51:

... When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them -neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[66] The concept of estoppel was also described by the British Columbia Court of Appeal in *Litwin Construction (1973) Ltd. v. Pan* 1988 Canlll 174 (BC CA), [1998] 29 B.C.L.R. (2d) 88 (C.A.), 52 D.L.R. (4th) 459, more recently cited with approval in *Desbiens v. Smith*, 2010 BCCA 394:

... it would be unreasonable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment ..." [emphasis added]. That statement was affirmed by the English Court of Appeal in *Habib Bank* and, as we read the decision, accepted by that Court in *Peyman v. Lanjani*, [1984], 3 All E.R. 703 at pp. 721 and 725 (Stephenson L.J.), p. 731 (May L.J.) and p. 735 (Slade L.J.).

[67] ... I find that Ms. Louie was required to give the Ms. Guevara reasonable notice that strict compliance would be enforced, before taking steps to terminate the residency for late payment. Such notice was not provided.

[68] Estoppel has been a fundamental principle of the law for a long time: see *Hughes v. Metropolitan Railway Co.* (1877), 2 App. Cas. 439. However, the Arbitrator failed to address this fundamental principle in his reasons. By so doing he deprived Ms. Guevara of the right to show that in the circumstances of the application before him it would have been unjust to permit Ms. Louie to terminate the tenancy agreement given the long course of conduct in which she acquiesced.

In the *Guevara v. Louie* case referred to above, the landlord's acquiescence accepting late payments from the tenant had occurred over a period of years. In this application, the Landlord accepted the rent from the Tenants after the due date over a period of 24 months. As such, I find the Landlord acquiesced in requiring strict compliance of the contractual obligation of the Tenants to pay the rent in full when due. Accordingly, I find there is sufficient evidence before me to find that the doctrine of estoppel applies in these circumstances. Based on the foregoing, I find the Landlord has not demonstrated, on a balance of probabilities that there is cause to end this tenancy. As such, I order the Second 10 Day Notice to be cancelled. The tenancy will continue until it is lawfully ended in accordance with the provisions of the Act. Based on the foregoing, the Second Application is dismissed in its entirety without leave to reapply.

Conclusion

The First Application and Second Application are dismissed in their entirety without leave to reapply.

The Second 10 Day Notice is cancelled. The tenancy will continue until it is lawfully ended in accordance with the provisions of the Act.

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: December 24, 2022

Residential Tenancy Branch