



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRAFALGAR MANAGEMENT LTD., TRAFALGAR MANAGEMENT LTD.
IN TRUST, AND BOUNDARY MANAGEMENT INC
AND [TENANT NAME
IS SUPPRESSED TO PROTECT PRIVACY]

DECISION

Dispute Codes:

CNR, OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on December 18, 2022 the Tenants' Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch by the Tenants on December 13, 2022 and December 15, 2022 were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord stated that the Landlord's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch by the Landlord on December 15, 2022 and December 22, 2022 were sent to each Tenant, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 25, 2022, December 26, 2022, and January 10, 2023 the Tenants submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord via registered mail, on January 10,

2023. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 29, 2023 the Tenants submitted an affidavit to the Residential Tenancy Branch. The female Tenant stated that this was sent to the Agent for the Landlord, via email, on January 29, 2023. The Agent for the Landlord noted that this evidence was sent on a Sunday. The Agent for the Landlord stated that she has not had time to view her emails today and she has not, therefore viewed any documents emailed to her by the Tenants on January 29, 2023.

As the evidence submitted to the Residential Tenancy Branch on January 29, 2023 was not served to the Landlord in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and the Agent for the Landlord has not viewed that evidence, the evidence was not accepted as evidence for these proceedings. The Tenants were advised that they could speak about this evidence but the physical document(s) would not be considered as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from January of 2023. I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Landlord's Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or unpaid utilities?
Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside or should the Landlord be granted an Order of Possession?

Background and Evidence

The Agent for the Landlord and the Tenants agree that:

- this tenancy began on December 15, 2020;
- an agent for the Landlord and both Tenants signed a tenancy agreement, which was submitted in evidence,
- the Landlord on the tenancy agreement is the Respondent with the initials “BMI”;
- the Respondent with the initials “TML” began managing the residential complex in 2021;
- the tenancy agreement requires the Tenant to pay rent of \$1,230.00 by the first day of each month;
- the Agent for the Landlord and both Tenants signed an amendment to the tenancy agreement, which granted them authority to move into a different rental unit (E202) in the residential complex under the same terms of their original tenancy agreement;
- the amendment to the tenancy agreement gave the Tenants authority to occupy this rental unit until February 01, 2023;
- the amendment to the tenancy agreement gave the Tenants authority to begin moving property into unit E202 in January of 2023;
- the Tenants were given authority to move into unit E202 because of a leak in the rental unit;
- no rent has been paid for December of 2022 or January of 2023; and
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 22, 2022, was posted on the door of the rental unit on December 09, 2022.

The Agent for the Landlord stated that on September 25, 2022 or September 26, 2022, a notice of rent increase was posted on the Tenants’ door, which declared that the rent was increasing on January 01, 2023. She stated she does not have a copy of the notice of rent increase with her so she is not certain of the amount of the increase, but she believes the rent was increased to \$1,254.00.

The female Tenant stated that they received a notice of rent increase in October or November of 2022, which declared the rent was increasing effective January 01, 2023. She stated she does not have a copy of the notice of rent increase with her, but she believes the rent was increased to \$1,270.00, \$1,275.00, or \$1,280.00.

The female Tenant stated that the Tenants did not have authority from the Residential Tenancy Branch to withhold rent from December of 2022 or January of 2023. She stated that the Tenants have not made emergency repairs to the unit.

The female Tenant stated that they have not yet moved into unit E202. The Agent for the Landlord stated that she does not know if the Tenants have completed their move to unit E202.

The female Tenant stated that although both Tenants still live in the rental unit they are not "tenants" because their tenancy agreement has been rescinded. She stated that she rescinded the tenancy agreement by writing the word "rescinded" on the agreement.

The female Tenant stated that the Landlord has not provided proof that rent is due.

The female Tenant stated that she received a grant from the Vancouver Rent Bank, in the amount of \$2,500.00. She stated that on December 25, 2022 the Vancouver Rent Bank offered to pay \$2,500.00 to the Landlord for rent for December of 2022 and January of 2023, but the Landlord declined the offer. She stated that on January 23, 2023 the Vancouver Rent Bank again offered to pay \$2,500.00 to the Landlord for rent, but the Landlord declined the second offer.

The Agent for the Landlord stated that she communicated with the Vancouver Rent Bank on two occasions. She stated that on the first occasion she told the person who was allegedly representing the Vancouver Rent Bank that the Landlord would not be withdrawing their application for an Order of Possession. She stated that on the second occasion she informed the person who was allegedly representing the Vancouver Rent Bank that the Landlord would only consider continuing the tenancy if certain conditions were met. She stated that at no time was there an offer of payment to the Landlord nor was there a discussion about the amount of rent due.

The female Tenant stated that she submitted emails from the Vancouver Rent Bank to the Residential Tenancy Branch on January 29, 2023 which she submits show that the Landlord was offered payment for rent for December of 2022 and January of 2023. She was asked to read out any portion of the emails that show such payment was offered. She did not read anything that convinces me payment was offered to the Landlord.

Analysis

On the basis of the undisputed evidence and the signed tenancy agreement that was submitted in evidence, I find that the Tenants entered into a tenancy agreement with the Landlord with the initials “BMI” for a tenancy that began on December 15, 2020.

On the basis of the undisputed evidence, I find that the Landlord with the initials “TML” began managing the residential complex in 2021. I find that they are the Tenants’ current Landlord, as “landlord” is defined by the *Residential Tenancy Act (Act)*.

As the Landlord and the Tenants did not sign a new tenancy agreement for December of 2022 and they lived in the rental unit in December of 2022, I find that they were tenants in this rental unit in December of 2022 and that they were obligated to comply with the terms of the tenancy agreement they signed in 2020.

I have placed no weight on the Tenant’s submission that they are not “tenants” because the female Tenant rescinded the tenancy agreement by writing the word “rescinded” on the agreement. Although a tenant has the right to end a tenancy in accordance with the *Act*, a tenant does not have the right to unilaterally rescind or cancel a tenancy agreement.

On the basis of the undisputed evidence, I find that the Tenants agreed to pay rent of \$1,230.00 by the first day of each month.

Section 26(1) of the *Act* stipulates that 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.

As the Tenants are required to pay rent when it is due, pursuant to section 26(1) of the *Act*, and there is no evidence that the Tenants had a right to withhold rent, I find that the Tenants must pay \$1,230.00 in rent for December of 2022.

I have placed no weight on the Tenant’s submission that the Landlord has not provided proof that rent is due. Documentary evidence that establishes rent is due for December of 2022 or January of 2023 is not necessary when both parties agree the rent has not been paid and there is no legal right to withhold that rent.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was posted at the rental unit on December 09, 2022. I find that this was proper notice of the Landlord's intent to end the tenancy pursuant to section 46(1) of the *Act*.

As the Tenants were served with proper notice of the Landlord's intent to end the tenancy pursuant to section 46 of the *Act* and the Tenants have not paid all of the outstanding rent that was due when that Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served, I find that the Landlord has the right to end the tenancy pursuant to section 46(1) of the *Act*. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenants' application to cancel this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

I find, pursuant to section 44(1)(f) of the *Act*, that this tenancy ends on January 31, 2023. As such, the Order of Possession will be effective on January 31, 2023.

On the basis of the undisputed evidence that no rent has been paid for January of 2023, I find that the Tenants must also pay rent of \$1,230.00 for January of 2023.

I note that the Order to pay rent does not reflect the rent increase the Landlord alleges was imposed on January 01, 2023. I have not included this rent increase as the Landlord has submitted insufficient evidence to establish that the rent was increased in accordance with the *Act*. The Landlord retains the right to file an Application for Dispute Resolution in which the Landlord seeks compensation for any rent increase that was lawfully imposed on January 01, 2023.

In adjudicating this matter, I have placed little weight on the Tenants' submission that the Landlord declined an offer of a rent payment from the Vancouver Rent Bank for December of 2022 and January of 2023. In reaching this conclusion I was heavily influenced by the absence of any independent evidence that corroborates the Tenants' submission that a payment was offered or that refutes the Agent for the Landlord's testimony that a payment was not offered.

I find that the excerpts of the emails read out by the female Tenant at the hearing do not establish that an offer of payment was ever made to the Landlord by the Vancouver Rent Bank.

On the basis of the undisputed evidence, I find that in January of 2023 the parties signed an amendment to the tenancy agreement, which granted the Tenants authority to move into a different rental unit in the residential complex under the same terms of their original tenancy agreement. This amendment gave the Tenants authority to occupy both this rental unit and unit E202 in the same complex during the latter part of January until February 01, 2023. It also gave the Tenants authority to continue to occupy unit E202 after February 01, 2023.

Given these unique circumstances, where the tenancy agreement was amended by changing the location of the rental unit due to an issue with a leak, I find that the original tenancy agreement was amended to change the location/address of the rental unit.

As the amended tenancy agreement gives the Tenants the right to occupy units E207 and E202 on January 31, 2023, I am granting the Landlord an Order of Possession that requires the Tenants to vacate both units.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession which requires the Tenants to vacate units E202 and E207 by 1:00 p.m. on January 31, 2023. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Tenants' application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed, without leave to reapply.

The Landlord has established a monetary claim, in the amount of \$2,560.00, which includes \$2,460.00 in rent for December of 2022 and January of 2023 and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$2,560.00. In the event the Tenants do not comply with this Order, it may be served on the Tenants,

filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: January 30, 2023

Residential Tenancy Branch