



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding EASTLEIGH VILLAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

The Tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the "Act").

The hearing was attended by the Tenant and T.Z., an Agent for the Landlord. The parties affirmed to tell the truth during the hearing. The Landlord was also represented at the hearing by counsel, M.M., who was not affirmed as they confirmed they had been called to the British Columbia Bar and as such, have already sworn an oath. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the "Materials") on the Landlord on March 6, 2023 via registered mail. The Landlord confirmed receipt of the Materials. Therefore I find that pursuant to sections 89 and 90 of the Act that Tenant's Materials were sufficiently served to the Landlord.

M.M. confirmed the Landlord's evidence was served onto the Tenant on March 24, 2023 by attaching it to the Tenant's door. The Tenant confirmed they received the Landlord's evidence on March 27, 2023, the day before the hearing, but had sufficient time to review it. Though rule 3.15 of the *Rules of Procedure* states the respondent's evidence must be served onto the applicant not less than seven days before the hearing, as the Tenant confirmed they had sufficient time to review the Landlord's evidence, I admitted it to consideration.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed that the tenancy started on June 1, 2018. Rent was initially \$1,100.00 due on the first day of the month. Parties agreed that rent increases had been served throughout the tenancy and that effective January 1, 2022, the Tenant was paying \$1,140.00 per month with an extra payment of \$10.00 per month for a parking fee resulting in a total monthly payment of \$1,150.00.

A security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid by the Tenant which the Landlord still holds. A copy of the written tenancy agreement ("Tenancy Agreement") was entered into evidence. The name of the Landlord on the Tenancy Agreement differs to that on the Application. Parties agreed that in July 2022 the property ownership transferred to the present Landlord. The Tenant still occupies the rental unit.

M.M. stated that on September 14, 2022 the Landlord completed and served a Notice of Rent Increase Form ("Rent Increase Notice") which increased monthly rent from \$1,140.00 to \$1,162.80 with an extra payment of \$10.00 per month due for parking, increasing the total amount due each month to \$1,172.80, effective January 1, 2023.

M.M. confirmed that since January 1, 2023, whilst the Tenant had been paying rent and doing so comfortably in advance of the day payment was due, they had not been paying the amount per the Rental Increase Notice. The Tenant paid \$1,150.00 for the months of January, February and March 2023 which was \$22.80 below the amount per the Rent Increase Notice.

Email correspondence and a letter were sent to the Tenant requesting the outstanding rent. I was referred to copies of emails dated December 23, 2022 and January 6, 2023, and a letter dated January 10, 2023 which had been entered into evidence by the Landlord.

M.M. confirmed that as of March 1, 2023 the outstanding amount of rent was \$68.40.

The Tenant testified that they did not receive the Rent Increase Notice. They stated they had always received notices of rent increases from the previous landlord and paid them accordingly. They stated had they received the Rent Increase Notice, they would have paid it.

The Tenant referred me to copies of 10 Day Notice to End Tenancy for Unpaid Rent dated January 27, 2023 and 9 February 2023 which had been entered into evidence by the Landlord and confirmed they were not received either.

The Tenant acknowledged receipt of the letter dated January 10, 2023. As they do not have contact information for the Landlord and none was provided on the letter they were not able to follow up and ask for clarity. They were, however, able to speak with an agent of the Landlord in person on January 19, 2023. The Tenant said no clarity regarding the rent increase was received from them and they were told to consult the Act.

The Tenant testified that no emails from the Landlord were received. They referred to the emails submitted into evidence by the Landlord testified they no longer had access to that email address and hadn't done for four years.

M.M. referred me to a photograph submitted into evidence by the Landlord which shows the Rent Increase Notice being held up in front of the front door of the rental unit.

T.Z. testified the photograph was taken on September 14, 2022 when they attached the Rent Increase Notice to the door of the rental unit. They confirmed there were no witnesses to the service of the Rent Increase Notice.

The Tenant drew my attention to the decorations on the door in the photograph showing Rent Increase Notice and stated that the photograph could not have been taken on September 14, 2022 as the decorations were not there at that time.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Section 42 of the Act allows landlords to increase rent once every twelve months provided at least three months notice is given to the tenant and that the approved form (RTB-7) is used.

The Tenant denies having ever received the Rent Increase Notice and, as such, paid the amount of rent due according to the Tenancy Agreement and previous rent increases at \$1,150.00 per month, believing this to be the correct amount. Conversely, the Landlord states the Rent Increase Notice was served to the Tenant and therefore,

effective January 1, 2023, the Tenant was obligated to pay \$1,172.80 per month which was not done and the Notice was issued accordingly.

In determining the merits of each side's assertions as to whether the Rent Increase Notice was validly served to the Tenant and, as such, the correct amount of rent the Tenant was obligated to pay, I take into consideration Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* which states that:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I accept the testimony from both parties which confirmed the Tenant adhered to all previous rent increase and paid rent comfortably in advance of the date it is due. It is clear to me that the Tenant was not adverse to paying rent.

I accept the Tenant's undisputed testimony that 10 Day Notices to End Tenancy for Unpaid Rent dated January 27, 2023 and 9 February 2023 and email correspondence requesting additional rent payments were not received by the Tenant. I accept that when correspondence was received from the Landlord by the Tenant on January 10, 2023 that communication from the Landlord was not forthcoming.

Though T.Z. testified under oath that they served the Rent Increase Notice on the Tenant by attaching to the door of the rental unit on September 14, 2023, I note that the service was not witnessed. Though a photograph of the Rent Increase Notice being held in front of the rental unit was provided, I do not give significant weight to this evidence as it, in and of itself, does not prove service or adequately replace witness testimony confirming service.

I accept that the Tenant did not receive the Rent Increase Notice, nor any courtesy copy, and based on the above, determine on the balance of probabilities that the Rent Increase Notice was not served on the Tenant and use my authority under section 62(2)

of the Act to find that the Rent Increase Notice was not served on the Tenant in accordance with the Act.

Therefore, I find on a balance of probabilities that the Notice was not given for a valid reason, namely, the non-payment of rent, as the Tenant had paid the amount of rent due in full, per the Tenancy Agreement.

As such, I grant the Tenant's Application and the Notice is cancelled. The 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2023 is of no force or effect and the tenancy continues.

Conclusion

The Application is granted.

The tenancy continues.

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: March 30, 2023

Residential Tenancy Branch