



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IRONCLAD DEVELOPMENTS
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL; CNR

Introduction

This hearing dealt with the landlord's application, filed on December 21, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for its application, pursuant to section 72.

This hearing also dealt with the tenant's application, filed on December 15, 2023, pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 11, 2023, and effective on December 26, 2023 ("10 Day Notice"), pursuant to section 46.

The landlord's two agents, landlord MD ("landlord's agent") and "landlord KG" (collectively "landlord's agents"), and the tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 36 minutes from 11:00 a.m. to 11:36 a.m.

All hearing participants confirmed their names and spelling. The landlord's agent and the tenant both provided their email addresses for me to send copies of this decision to both parties.

The landlord's agent confirmed that the landlord company ("landlord") named in this application owns the rental unit. He provided the legal name and spelling of the landlord and the rental unit address.

The landlord's agent said that he is employed by the landlord as an operations specialist. Landlord KG stated that she is employed by the landlord as a manager of operational standards and business system. The landlord's agents both said that they had permission to represent the landlord. They identified the landlord's agent as the primary speaker for the landlord.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed that they would not record this hearing.

Preliminary Issues – Hearing and Settlement Options, Service of Documents

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing. Both parties settled a portion of their applications, except for the landlord's monetary claims for unpaid rent and the filing fee. The landlord's agents were given ample and additional time to speak privately during this hearing, regarding settlement options.

I cautioned the landlord's agents that if I dismissed the landlord's entire monetary application without leave to reapply, the landlord would receive \$0. The landlord's agents affirmed that the landlord was prepared to accept the above consequences if that was my decision.

I cautioned the tenant that if I granted the landlord's entire monetary application, the tenant would be required to pay the landlord \$380.00 total, including the \$100.00 filing fee. The tenant affirmed that he was prepared to accept the above consequences if that was my decision.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the

tenant was duly served with the landlord's application and the landlord was duly served with the tenant's application.

Settlement Terms

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During this hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute, except for the landlord's monetary claims.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, except for the landlord's monetary claims:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 31, 2024, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that the landlord's 10 Day Notice is cancelled and of no force or effect;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications, except for the landlord's monetary claims.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the landlord's monetary claims. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding, and enforceable, which settle all aspects of this dispute, except for the landlord's monetary claims.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this 36-minute hearing. Both parties were provided with ample time during this hearing to think about, ask questions, discuss, negotiate, and decide about the above settlement terms.

The landlord's agents were provided with additional time during this hearing to privately discuss settlement options with each other.

The landlord's agents asked that I make a decision about the landlord's monetary claims because both parties declined to settle it at this hearing, even though I provided them with multiple opportunities to do so.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my summarized findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2014, with the former landlord. A written tenancy agreement was signed by the tenant and the former landlord. The landlord took over this tenancy in November 2021. A security deposit of \$470.00 was paid by the tenant and the landlord continues to retain this deposit in full. The tenant continues to occupy the rental unit.

Both parties agreed to the following facts. The written tenancy agreement requires the tenant to pay rent of \$940.00 per month. The tenant has been paying rent of \$800.00 per month, from the beginning of his tenancy in February 2014 to the present date, to both the former and current landlords. The landlord accepted rent of \$800.00 per month from the tenant, since it took over this tenancy in November 2021. The landlord did not issue the 10 Day Notice or pursue monthly rent of \$940.00 from the tenant, until December 2023.

The landlord's agent testified regarding the following facts. The landlord missed it and did not realize that the tenant was not paying rent of \$940.00, until November 2023. The tenant owes unpaid rent of \$140.00 per month for each of November and December 2023, totalling \$280.00. The landlord seeks \$280.00 for unpaid rent plus the \$100.00 filing fee.

The tenant testified regarding the following facts. He has been paying rent of \$800.00 per month for his entire tenancy of 10 years. He paid it to the landlord for 3 years, since

it took over this tenancy. He paid the same rent to the former landlord. He is moving out of the rental unit in 2 months. He is a senior and a pensioner. The landlord said that it did not realize the issue, and accepted rent from the tenant of \$800.00 per month.

The landlord's agent said that he did not want to respond to the tenant's testimony, despite the fact that I provided him with the specific opportunity to do so.

Analysis

Rules and Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to present and prove its monetary application. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide sufficient evidence of its claims, in order to obtain a monetary order against the tenant.

The landlord was provided with an application package from the RTB, including a four-page NODRP, dated December 21, 2023, when it filed its application.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (my emphasis added):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.**
- **Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.**
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- **A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.**

The landlord received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence to support its application, and links to the RTB website.

It is up to the landlord to prove its application, as per the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of its claims, since it chose to file its application on its own accord.

The following RTB *Rules* are applicable and state the following, in part:

6.6 The standard of proof and onus of proof

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.***

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord's agents did not sufficiently present, explain, or prove the landlord's monetary claims, as required by Rules 6.6 and 7.4 of the RTB *Rules*, despite

having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB Rules.

This hearing lasted 36 minutes, so the landlord's agents had ample time and multiple opportunities to present the landlord's application. During this hearing, I repeatedly asked the landlord's agents if they had any other information to present and provided them with multiple opportunities for same. The landlord's agent only spent a few minutes presenting the landlord's application and did not respond to or dispute the tenant's testimony, even though I specifically provided him with the opportunity to do so.

Act and Policy Guidelines

Section 26 of the Act requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case, as per both parties' testimony. Section 7(1) of the Act establishes that a tenant who does not comply with the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement, must compensate the landlord for damage or loss that results from that failure to comply.

Residential Tenancy Policy Guideline 11 discusses waiver, in part (my emphasis added):

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

*For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. **However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for "use and occupancy only," it could be implied that the landlord and tenant intend for the tenancy to continue.***

Intent may also be established by evidence as to:

• whether the landlord specifically informed the tenant that the money would be for use and occupancy only;

• whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and

• the conduct of the parties.

Findings

I find that the landlord accepted the tenant's rent payments for November and December 2023, after the effective date on the 10 Day Notice. Neither party indicated whether the tenant paid rent for January 2023 to the landlord. The landlord did not indicate whether it issued rent receipts for "use and occupancy only," or other written documentation, to tell the tenant that the tenancy was not reinstated. I find that the landlord did not provide sufficient evidence to show that the tenant's tenancy was not reinstated.

Both parties agreed that the tenant paid rent of \$800.00 per month from the beginning of this tenancy on February 1, 2014, to the present date of this hearing on January 18, 2024, a period of almost 10 years. While there was a former landlord, this current landlord assumed this tenancy in November 2021. I find that the landlord agreed and accepted rent of \$800.00 per month from the tenant. I find that the rent of \$940.00 per month, as indicated in the tenancy agreement, was not paid by the tenant at any time during this tenancy. This amount was also not paid after the landlord took over this tenancy in November 2021, and it was not requested for over 2 years until December 2023, when the landlord issued a 10 Day Notice to the tenant.

I find that the landlord waived its right to monthly rent of \$940.00 per month, because this has not been paid by the tenant or requested by the landlord during this tenancy until December 2023. Neither party reviewed the details on the 10 Day Notice that was provided for this hearing. However, the notice indicates that it was not issued until December 11, 2023, and it is effective on December 26, 2023, for \$280.00 total for unpaid rent, due on December 1, 2023.

The landlord claimed that the rent amount of \$940.00 in the tenancy agreement was missed and the tenant questioned same. However, if the landlord expected the tenant to pay the full rent of \$940.00, as per the tenancy agreement, as the landlord's agents claimed during this hearing, then the landlord would not have "missed" the extra \$140.00, which is a substantial amount, that the tenant did not pay for over 2 years.

I find that the landlord has been accepting rent payments of \$800.00 per month from the tenant from November 2021 to December 2023. I find that the landlord did not pursue the tenant for any unpaid rent for a period of over 2 years, from November 2021 to December 2023.

I find that the landlord failed to provide sufficient evidence that it pursued the tenant for any unpaid rent, issued any other notices to end tenancy to the tenant for unpaid rent, aside from the 10 Day Notice in December 2023, or filed any RTB applications for unpaid rent against the tenant, except for its current application at this hearing on January 18, 2024. The landlord's agent said that the landlord was not seeking any retroactive rent from the tenant prior to November 2023, even though the tenant only paid \$800.00 per month, since the landlord took over in November 2021.

For the above reasons, I declare that the legal rent for this rental unit and tenancy is \$800.00 per month, for the remainder of this tenancy, until the rent is legally changed in accordance with the *Act*.

I find that the landlord is not entitled to a monetary order of \$280.00 for unpaid rent, including \$140.00 for November 2023 and \$140.00 for December 2023, from the tenant. This claim is dismissed without leave to reapply. I find that the tenant paid the full rent due from November 1 to December 31, 2023, of \$800.00 per month, to the landlord, as noted above.

As the landlord was unsuccessful in its monetary application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant. This claim is also dismissed without leave to reapply.

Conclusion

I declare that the legal rent for this rental unit and tenancy is \$800.00 per month, for the remainder of this tenancy, until the rent is legally changed in accordance with the *Act*.

I order both parties to comply with all of the above settlement terms.

To give effect to the settlement reached between the parties and as discussed with both parties during this hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on March 31, 2024, as per condition #1 of the above agreement. The tenant

must be served with a copy of this Order. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 10 Day Notice, dated December 11, 2023, is cancelled and of no force or effect.

The remainder of the landlord's application is dismissed without leave to reapply.

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: January 23, 2024

Residential Tenancy Branch