



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST BAY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: Landlord's Application for Additional Rent Increase: O
Tenant's Application: MT, DRI, CNC, CNR, MNDC

Introduction & Background

The original hearing to hear the Landlord's Application for Additional Rent Increase (the "Landlord's Application for Rent Increase") pursuant to Section 43(3) of the *Residential Tenancy Act* (the "Act") took place on December 10, 2014 by conference call.

The parties appeared for the December 10, 2014 hearing. However, the Landlord's Application for Rent Increase was adjourned due to reasons documented in my Interim Decision dated December 10, 2014.

During the hearing of December 10, 2014, the Landlord's agent indicated that the Tenant had not paid rent that was due on December 1, 2014 and that this contradicted the instructions provided to the Tenant in a previous Decision made by me on November 27, 2014.

The previous Decision issued November 27, 2014 detailed my findings on the Tenant's Application to cancel a notice to end tenancy for unpaid rent and to dispute an illegal rent increase, the file number for which is documented on the front page of this decision.

In my November 27, 2014 Decision, the Tenant was awarded monetary compensation after I made a finding that the Landlord had imposed an illegal rent increase upon the Tenant. The monetary award was issued to the Tenant in the form of a Monetary Order to enforce against the Landlord and the Tenant was specifically instructed to continue to pay his monthly rent, which I determined would be \$550.00 per month, starting December 1, 2014.

As this previous decision was being rendered at the end of November 2014, I anticipated that the Tenant may not receive my written Decision in time to make his

December 1, 2014 rent payment as instructed in my Decision. As a result, I requested an Information Officer at the Residential Tenancy Branch to contact the Tenant via telephone on November 28, 2014 and inform him of the requirement to pay December 1, 2014 rent as detailed in my written decision dated November 27, 2014.

During the hearing on December 10, 2014, the Tenant acknowledged that he had been contacted by the Residential Tenancy Branch by phone and was informed that my November 27, 2014 Decision instructed him to pay his December 1, 2014 rent of \$550.00.

The Tenant testified that despite that telephone call, he had not paid rent on December 1, 2014 because he was waiting to receive the November 27, 2014 written Decision in the mail to confirm that it instructed him to pay his December 1, 2014 rent. The Tenant stated that he received the November 27, 2014 written decision approximately one or two days before the December 10, 2014 hearing.

During the December 10, 2014 hearing, the Tenant was ordered again to pay his rent that was due on December 1, 2014 as instructed in my written decision of November 27, 2014. The requirement for the Tenant to pay his December 1, 2014 rent was again re-iterated and confirmed in my written Interim Decision made on December 10, 2014.

When the December 1, 2014 rent remained unpaid, the Tenant was issued with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") which was personally served to the Tenant on December 11, 2014.

On December 22, 2014, the Tenant made an Application for Dispute Resolution (the "Tenant's Application") for the following issues: to dispute the 10 Day Notice; for more time to cancel the 10 Day Notice; to dispute an additional rent increase; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Following the Tenant's Application, the Residential Tenancy Branch joined the Tenant's Application to be heard at the same time as the Landlord's Application for Rent Increase as these matters were inextricably linked.

The parties appeared for the reconvened hearing and I explained that, pursuant to section 2.3 of the Rules of Procedures, in this hearing I would only be dealing with matters that were sufficiently related. Therefore, I determined that I would hear all the matters on both parties' applications apart from the Tenant's Application for monetary compensation, which is hereby dismissed with leave to re-apply.

The hearing process was explained and the parties acknowledged their understanding of the instructions and had no questions of the proceedings. The parties were given an opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. All testimony was given under affirmation.

Issue(s) to be Decided

- Is the Tenant entitled to cancel the 10 Day Notice issued on December 11, 2014?
- What is to happen to the Landlord's Application for Rent Increase?

Evidence

Both parties agreed that this tenancy started on June 8, 2006 for a fixed term of one year after which the tenancy continued on a month to month basis. A written tenancy agreement was completed and rent at the start of the tenancy was established at \$550.00, payable on the first day of each month.

In my Decision dated November 27, 2014, the current rent payable by the Tenant under this tenancy agreement was set back to \$550.00 effective December 1, 2014 and is payable on the first day of each month.

The Landlord's agent testified that following the hearing of December 10, 2014, the Tenant failed to pay his rent for December 2014 as previously instructed. As a result, the Landlord's agent served the Tenant with the 10 Day Notice on December 11, 2014.

The 10 Day Notice was provided in evidence by the Tenant and shows an effective vacancy date of December 23, 2014 due to \$550.00 in unpaid rent that was payable on December 1, 2014. The Landlord's agent further testified that the Tenant had also failed to pay rent for January 2015. As a result the Landlord's agent made a verbal request for an immediate Order of Possession for the rental suite during the hearing.

The Tenant testified that during December 2014 he was having and still continues to have medical problems associated with major surgery for a stroke that he had been recovering from. In addition the Tenant testified that he had a multitude of other medical issues including hip problems which were impeding his ability to walk.

The Tenant explained that he had not paid rent on December 1, 2014 because he was still waiting for my written decision for the November 27, 2014 hearing. The Tenant acknowledged that he had been contacted by the Residential Tenancy Branch on

November 28, 2014 but he did not want to do anything until he received something from me in writing.

The Tenant acknowledged that he had received the written Decision of November 27, 2014 in the mail at his address one or two days prior to the hearing of December 10, 2014. However, the Tenant explained that he needed more time to read and consider the decision.

The Tenant acknowledged receipt of the 10 Day Notice on December 11, 2014 and stated that he was too ill and did not have enough time to make payment to the Landlord for the December 1, 2014 rent.

The Tenant applied to dispute the 10 Day Notice on December 22, 2014, being six days outside of the five day time limit allowed under the Act. When the Tenant was asked about the reasons why he had applied outside of the time limit which was explained on the 10 Day Notice, the Tenant testified that he had to bike to the Kelowna Service BC office on December 19, 2014 and by the time he got to the office they had closed. As a result, the Tenant was not able to make his Application until December 22, 2014.

The Tenant acknowledged that he had received my Interim Decision dated December 10, 2014 several days later. The Tenant was unable to provide a specific date but claimed that it was in the latter half of December 2014. When the Tenant was asked why he had not paid rent that was due on January 1, 2015, the Tenant again explained that he was too ill and did not have sufficient time.

The Tenant testified that he consulted with his lawyer in January, 2015, after which he was advised to pay his January 1, 2015 rent. The Tenant testified that he had a cheque for the January 1, 2015 rent and was intending to give this to the Landlord after this January 15, 2015 hearing.

The Landlord's agent disputed the Tenant's testimony stating that despite my instructions and Decisions, they have received no rent from the Tenant for December 2014 or January 2015. The Landlord's agent testified that they had not been served with the Monetary Order that was issued to the Tenant on November 27, 2014.

Analysis

I first turn my mind to the Tenant's Application to cancel the 10 Day Notice issued on December 11, 2014. I find that the contents of the 10 Day Notice and the approved form used by the Landlord complied with the requirements of Section 52 of the Act.

When a Landlord serves a Tenant with a 10 Day Notice, the Tenant has five days to make an Application to dispute the 10 Day Notice or pay the outstanding rent pursuant to Section 47(4) of the Act.

In this case the Tenant confirmed that he personally received the 10 Day Notice on December 11, 2014; this date is also documented on the Tenant's Application as the date he received it. Therefore, the Tenant had until **December 16, 2014** to dispute the 10 Day Notice or pay December 2014 rent. However the Tenant did not make his Application to dispute the 10 Day Notice until **December 22, 2014**, being six days outside of the five day time limit allowed under the Act.

Section 66(1) of the Act allows an Arbitrator to extend a time limit that is established by the Act under exceptional circumstances. In this case, the Tenant applied for more time to cancel the 10 Day Notice and submitted that he had biked to the Kelowna Service BC office on December 19, 2014 at which point the offices were closed. Therefore, the Tenant was seeking to make his Application on **December 19, 2014** which was on a date that was already outside of the time limit set by the Act. The Tenant pointed to his multiple health conditions, including a stroke and hip problems, throughout the hearing in an effort to justify making his Application outside of the time limits.

However, I find it difficult to believe that the Tenant was able to ride a bike at the same time he claims to have the medical conditions that he had. I find that the Tenant failed to provide sufficient supporting evidence, such as medical evidence, to corroborate his submissions and claims that there were exceptional circumstances that would allow me to extend the time limit to dispute the 10 Day Notice. As a result, I dismiss the Tenant's Application for more time to cancel the 10 Day Notice.

In considering the Tenant's submissions that he was allegedly confused about the process, and for the purposes of clarity, I felt it necessary to provide further analysis on why I found this tenancy should end in accordance with the 10 Day Notice issued December 11, 2014. Therefore, on a balance of probabilities, I made the following findings.

The Tenant claimed that he was confused about the instructions for him to pay rent. Having examined the evidence in relation to the requirement for the Tenant to pay rent, I determined that in my previous decision of November 27, 2014 I had given clear direction to the Tenant that his award for monetary relief was to be achieved through the Monetary Order issued to him. Had the Tenant been allowed to deduct this from his on-going rent payments then I would have made that clear in my November 27, 2014 decision.

My November 27, 2014 Decision clearly explained that while the Act allows me to offset an award payable to a party by deducting it from future rent, in this case, I awarded the Tenant a Monetary Order to be served to the Landlord and for the Landlord to make this payment to him in accordance with the Tenant's instructions. In addition, the November 27, 2014 Decision also required the Tenant to continue to pay rent in the amount of \$550.00 starting on December 1, 2014.

As noted in my November 27, 2014 Decision, the Landlord already had an Application for Rent Increase in progress, and it was my decision to keep the matters separate so that any findings made on the Landlord's Application for Rent Increase would not interfere with, complicate, or confuse the amounts which had been awarded to the Tenant.

I do not accept the Tenant's submission he was confused about the oral and written instructions given to him to pay his rent. Rather, I find that my decision was clearly communicated to the Tenant on the following four occasions, which the Tenant readily acknowledged:

- On November 28, 2014, the Tenant was contacted by the Residential Tenancy Branch by phone and was told the instructions to pay rent for December 1, 2014 as he would likely not receive the written decision prior to December 1, 2014. The Tenant acknowledged receiving these oral instructions and argued that he wanted to wait until he received my written decision.
- The Tenant acknowledged receipt of my written decision dated November 27, 2014 before the December 10, 2014 hearing. My written decision clearly stipulated the Tenant's requirement to pay rent as follows:

*"In determining how the Tenant is to achieve this monetary relief, the Act allows me to order the Tenant to make further deductions from his rent. However, after considering the fact that the Landlord has an application for an additional rent increase scheduled in the near future, a determination of the Landlord's Application could impact and confuse the amount the Tenant can deduct from his rent. Therefore, in the circumstances, I find it more appropriate to issue the Tenant with a Monetary Order for \$1,720.00 payable by the Landlord. Accordingly, the Tenant is instructed to continue to pay monthly rent in the amount of **\$550.00** until this amount changes in accordance with the Act."*

[Reproduced as written]

- The Tenant was cautioned during the conference call hearing of December 10, 2014 to pay his rent that was due on December 1, 2014 as he had confirmed that at that point it was still unpaid by him.
- The Tenant acknowledged receipt of my Interim Decision dated December 10, 2014 during the latter half of the December 2014, which again stipulated the requirement for the Tenant to pay rent as follows:

“The Tenant was contacted by the Residential Tenancy Branch on November 28, 2014 and was informed of the decision dated November 28, 2014 and that the decision instructed him to pay December, 2014 rent in the amount of \$550.00.

However, the Tenant explained that he had not paid December, 2014 rent because he was waiting for the written decision which he only received the day prior to this hearing. The Tenant was cautioned about the instructions provided to him in the previous decision to pay December, 2014 rent.”

[Reproduced as written]

Sections 62 (1), (2) and (3) of the Act provide the authority respecting dispute resolution proceedings as follows:

62 (1) *The director has authority to determine*

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I find that there is clear evidence that the Tenant was ordered to pay rent for December 1, 2014 onwards and that this authority was afforded to me by Section 62 of the Act.

However, despite two oral instructions and two written instructions, the Tenant failed to pay rent and failed to comply with the order provided to him.

I find that the Tenant failed to provide sufficient evidence to demonstrate he had reasons to not comply with my instructions to pay rent starting December 1, 2014.

I find that the Tenant was provided monetary relief, for the Landlord to pay him the amount awarded to the Tenant, but instead of the Tenant serving this order on the Landlord so that the Landlord could make payment to the Tenant, the Tenant decided instead to pursue his own course of action by continuing to not pay rent. The Tenant was specifically instructed not to do this and so I find that this is a clear violation of my November 27, 2014 Decision that was issued pursuant to Section 62 of the Act, as listed above.

Based on the foregoing, I find that the Tenant is not entitled to cancel the 10 Day Notice issued December 11, 2014, because he failed to pay rent for December 2014 and January 2015 in violation of an order given to him under the Act. As a result, I dismiss the Tenant's Application to cancel the 10 Day Notice.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a 10 Day Notice and the Application is dismissed, the Arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing.

As the Landlord's agent made an oral request, I grant the Landlord an Order of Possession pursuant to Section 55(1) of the Act. As the effective date of the 10 Day Notice has now passed and the Tenant has not paid any rent for over holding the tenancy, I find that the Landlord is entitled to an immediate Order of Possession.

While I did hear evidence from both parties with respect to the Landlord's Application for Rent Increase, this is now a moot issue as the tenancy will be ending. Therefore, I have not considered the evidence or made any legal findings with respect to the Landlord's Application for Rent Increase which is hereby dismissed.

The Tenant disputed the Landlord's illegal rent increase during the previous hearing of November 27, 2014 for which the Tenant has already been issued with a Monetary Order. Therefore, I dismiss the Tenant's second Application to dispute an additional rent increase filed December 22, 2014 that pertained to this hearing held on January 15, 2015.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application to cancel the 10 Day Notice, for more time to cancel the 10 Day Notice, and to dispute an additional rent increase.

The Tenant's Application for monetary compensation is dismissed with leave to re-apply.

The Landlord is granted an Order of Possession which is effective **two days after service on the Tenant**. This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court as an order of that court.

As this tenancy has ended, I find the Landlord's Application for Rent Increase is now moot, and is dismissed.

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 16, 2015

Residential Tenancy Branch

