



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MT (CNR ERP FFT)
Landlord: OPR, FF

Introduction

This hearing was convened in response to cross- applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied November 20, 2018 to/for:

1. *More time to dispute a notice to end tenancy – Section 66; if successful,*
2. Cancel a Notice to End for Unpaid Rent - Section 46.
3. Emergency repairs – Section 33
4. Recover the filing fee for this application - Section 72

The landlord applied December 01, 2017 for:

1. An Order of Possession due to unpaid rent - Section 55
2. Recover the filing fee for this application - Section 72
3. Monetary Order for unpaid rent – Section 67

Two of the landlord's representatives, and the tenant with their advocate attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to their claims and to make relevant prior submission to the hearing and participate in the conference call hearing. The parties acknowledged exchanging their respective evidence. The parties were given opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Hearings are generally limited to issues which are relevant to one another and are related in fact and law. In this case, the primary issue before this proceeding is the tenant's application to cancel a Notice to End tenancy for unpaid rent. All other issues

are not related to the dispute over the Notice to end. Therefore the parties were apprised that the balances of claims are therefore dismissed pursuant to Rule of Procedure 2.3, with liberty to re-apply.

The parties confirmed the address now reflected in the style of cause is the accurate address. By consent of the parties I accepted the landlord's late amendment to their application for a Monetary Order for unpaid rent.

Preliminary matters

Having made their application on November 20, 2017 the tenant made their application with request for *more time to file an application* to cancel the landlord's Notice to End for unpaid rent. The parties agree the landlord posted the Notice on the tenant's door November 08, 2017 and that Section 90 of the Act deems the tenant to have received the Notice November 11, 2017. The tenant and their advocate argued that presumption of service as contemplated by Section 90 is rebuttable predicated on circumstances they described as follows.

There is a contractual tenancy between the tenant of this matter and the landlord. The parties acknowledged having a disputatious relationship over historical tenancy issues. The tenant's *partner* and the landlord have a different contractual tenancy for a different rental unit of the landlord. The landlord acknowledges that the rent for the tenant of this matter has routinely been paid by the tenant's *partner*, whom resides in a nearby rental unit. The tenant of this matter testified they first became aware of the landlord's Notice to End on November 20, 2017 as their partner concealed the existence of the Notice to End. As explanation the tenant presented the tenant's *partner*, GM, as a witness.

GM testified that as they walked by the tenant's door on November 08, 2017 they saw the landlord's Notice to End for unpaid rent and removed the Notice with the intent to satisfy the rent soon thereafter. With consideration and concern for the tenant's mental health they did not notify the tenant of the Notice to End until it later became apparent to the tenant on November 20, 2017.

Upon becoming aware of the landlord's Notice and it having been taken by GM the tenant immediately sought to satisfy the rent on November 20, 2017, but it was refused by the landlord, whom testified was unaware of the tenant's circumstances vis a vis the Notice, and which resulted in the parties advancing in their respective directions regarding this matter. The tenant argued that effectively they attempted to pay the rent within the prescribed 5 days to do so following receipt of the landlord's Notice to End for unpaid rent, but that it was refused by the landlord. The landlord acknowledged

refusing the rent, even *for use and occupancy only*, and further has refused the rent for the 3 months thereafter awaiting resolution through arbitration.

I considered the preponderance of evidence on the request for *more time*, the tenant's rebuttal on presumption of service, and I further reflected on the nature of the tenancy relationship and the resulting conduct of the parties. I found that the tenant presented sufficient *exceptional circumstances* as prescribed by **Section 66** of the Act in allowing the tenant to exceed the time limit to dispute the landlord's Notice to End for unpaid rent. Pursuant to **Section 71(2)(b)** I found the tenant received the landlord's Notice to End on **November 20, 2017** for the purposes of the Act, and the hearing proceeded on the tenant's application to cancel the landlord's Notice to End and the landlord's application seeking an order of possession and an Order respecting unpaid rent.

Issue(s) to be Decided

Is the notice to end tenancy valid?
Should the Notice be cancelled?
Is the landlord entitled to an Order of Possession?
Is the landlord entitled to arrears of rent?

Background and Evidence

This tenancy started in 2009. The payable monthly rent is \$1080.00. I have effectively established that for the purposes of the Act the tenant received a Notice to End for unpaid rent on November 20, 2017 stating that as of November 01, 2017 the tenant owed unpaid rent of \$1080.00. The tenant had 5 days to pay the rent or file to dispute the Notice. The tenant attempted to satisfy the rent on November 20, 2017 but the landlord refused acceptance of the tenant's payment for the owed rent. The landlord acknowledged they subsequently continued to refuse any payment toward rent for the 3 months thereafter. During the hearing the parties discussed the relevant dispute at hand and came to limited agreement based on the prospective outcome of my Decision.

Analysis

On a balance of probabilities I find it reasonable to conclude that the parties' disputatious relationship has driven this dispute. But moreover, I find the tenant was served with a Notice to End for unpaid rent and that as afforded by Section 46(4) of the Act the tenant tried to pay the rent within the time authorized and was rebuffed by the landlord from doing so for reasons of the landlord. I find the landlord's Notice to End as valid; however, the Act permits a tenant to pay the rent within 5 days of receiving the

Notice and in such circumstances the Notice becomes moot. Therefore, as a result of all the foregoing,

I Order the Notice to End dated November 08, 2017 is **cancelled**, or set aside with the effect that the tenancy continues.

I find that by the parties consent to the landlord's amendment seeking arrears of rent, the landlord is entitled to all unpaid rent which in this matter spans the payable rent for November and December 2017 as well as for January and now February 2018. The tenant has agreed to satisfy the rent for these 4 months forthwith and does not contest the landlord receiving a Monetary Order to this effect. So as to perfect this understanding and the landlord's entitlement to rent the landlord is given a Monetary Order in the applicable amount representing \$1080.00 x 4 months.

As agreed by the landlord, to not use the months of November 2017 to February 2018 in any future calculation respecting late payment of rent, I perfect this understanding as follows,

I Order that the landlord is estopped or prevented from issuing to the tenant a Notice to End Tenancy for Unpaid Rent or a Notice respecting repeated late payments of rent for the months, or including the months, of November 2017 to February 2018.

As both parties have, in part, been successful I find any entitlement to their respective filing fees cancel out.

Conclusion

The tenant's application, relevant to this proceeding, is granted. The Notice to End for unpaid rent with an effective date of November 21, 2017 is of no effect. The tenancy continues. The balance of their application is dismissed with leave to reapply.

I grant the landlord a Monetary Order under Section 67 of the Act in the sum amount of **\$4320.00**. If the tenant does not satisfy this Order forthwith the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: February 07, 2018

Residential Tenancy Branch