Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC
OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant (the Tenant's Application) under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) and;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

This hearing also dealt an Application for Dispute Resolution by Direct Request filed by the Landlords (the Landlords' Application) under the Act that was adjourned to a participatory hearing, seeking:

- An Order of Possession;
- Unpaid Rent; and
- Recovery of the Filing fee.

The hearing was originally convened by telephone conference call before another arbitrator on November 19, 2020, and adjourned due to administrative fairness concerns as the result of a scheduling conflict at the Residential Tenancy Branch (the Branch) where two separate Applications between the parties were scheduled to be heard at the same date and time before different arbitrators. As a result, only the Tenant attended the original hearing as the Landlords were in attendance at the other hearing,

along with two other tenants of the rental unit not named in either of the Applications before me for consideration.

The arbitrator at the original hearing adjourned the matter, which was reconvened before me, as no matters were heard or decided at the original hearing and therefore the original arbitrator was not ceased of the matters. An Interim Decision was rendered by the original arbitrator on November 23, 2020, explaining the adjournment and copies of the Interim Decision and the Notice of Hearing for today's hearing were sent to the parties by the Branch by email, the manner requested by them in their respective Applications, on November 25, 2020. For the sake of brevity, I will not repeat the matters covered in the Interim Decision, which should be read in conjunction with this Decision.

The hearing was reconvened before me by telephone conference call on December 14, 2020, at 9:30 A.M., and was attended by the Landlords, who provided affirmed testimony. Although the teleconference line remained open for 26 minutes, no one called into the teleconference on behalf of the Tenant.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord G.D. testified that their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of their Application and the Notice of Hearing for the original Direct Request, were personally served on the Tenant on September 30, 2020, in the presence of their spouse, S.D. who is the other Landlord named in the Landlords' Application. S.D. appeared at the hearing and confirmed that they were present with G.D. on September 30, 2020, at 4:57 P.M. when the above noted documents were personally served on the Tenant. Based on the above, and as there is no evidence before me to the contrary, I find that the Tenant was personally served with the above noted documents in accordance with the Act and the Rules of Procedure on September 30, 2020.

As the Branch served all three parties copies of the Interim Decision and the Notice of Hearing for this teleconference hearing by email on November 25, 2020, at the email addresses listed by them in their respective Applications, I find that it was not necessary for the Landlords to serve the notice of this hearing on the Tenant. Based on the above, and pursuant to rule 7.3 of the Rules of Procedure, the Tenant's Application was

dismissed without leave to reapply and the hearing proceeded as scheduled with respect to the Landlords' Application despite the absence of the Tenant or anyone acting on their behalf.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlords, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in their Application.

Preliminary Matters

Preliminary Matter #1

The Landlords stated that the amount of outstanding rent has increased since the time the Application was filed and sought to amend the Application to include additional rent now outstanding. Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made, the Application may be amended at the hearing.

I have amended the Application accordingly to include all rent currently outstanding as of the date of the hearing.

Preliminary Matter #2

The Landlords withdrew their request for recovery of the filing fee as they stated that the filing fee was waived.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to recovery of unpaid rent?

Background and Evidence

The written tenancy agreement in the documentary evidence before me, signed on November 30, 2019, for a month to month tenancy which commenced on December 1, 2019, states that rent in the amount of $1,250.00 is due on the first day of each month and that a security deposit in the amount of $625.00 was paid. The Tenancy agreement lists the Tenant, J.M. and a roommate R.R. as co-tenants. In reviewing the tenancy agreement, R.R. appears to have been removed from the lease on March 29, 2020, and replaced by D.A. on May 1, 2020. D.A. also appears to have been removed form the lease effective July 31, 2020. The Landlords stated that all of the above is correct, and that they currently only hold $312.50 of a security deposit paid by the Tenant J.M., half of the amount originally paid as the other half was returned to R.R. when they vacated.

Despite the above, a decision was rendered in relation to this rental unit, this tenancy, the Tenant, and two other tenants, D.B. and V.N., by another arbitrator on November 19, 2020, finding that rent in the amount of $1,500.00 is due on the first day of each month, payable by one or all-three of the co-tenants. Although a copy of the above noted written tenancy agreement does not appear to have been before the arbitrator of that Decision, the Landlords agreed in the hearing conducted before me on December 14, 2020, that the written tenancy agreement was effectively amended at the end of July 2020, to add D.B. and V.N to the agreement, and that rent was increased to $1,500.00 as a result of the addition of an additional tenant in the rental unit. Although they argued that this was meant to be a temporary arrangement, which is why the written tenancy agreement was not physically updated, the previous arbitrator already found on November 19, 2020, that it was not a temporary arrangement and that a tenancy had therefore been established.

The Landlords stated that only the following amounts have been paid for rent since July 2020:

- $1,000.00 for August 2020, by way of two separate payments of $500.00 each, on August 6, 2020, and August 20, 2020, from D.B. and V.N.
- $1,000.00 for September 2020, paid September 11,2020, by D.B. and V.N.
- $350.00 for November 2020, paid directly by a government agency on behalf of J.M.

The Landlords stated that no rent al all has been paid for either October or December 2020.

The Landlords stated that when full rent was not paid as required for September 2020, a 10 Day Notice was posted to the door of the rental unit on September 14, 2020. A witnessed and signed proof of service was submitted in support of this testimony.

The 10 Day Notice in the documentary evidence before me contains the address for the rental unit, is signed and dated September 14, 2020, and states that rent in the amount of $1,250.00 is due, $625.00 of which was due August 1, 2020, and $625.00 of which was due September 1, 2020.

The Landlords stated that this amount was based on the previous written tenancy agreement between themselves, J.M., and one roommate, wherein $1,250.00 was due on the 1st day of each month. The Landlords stated that they charged the Tenant only $625.00 as that was half of the rent payable under the written tenancy agreement and the last roommate noted on the tenancy agreement, D.A. had been removed from the written tenancy agreement effective July 31, 2020.

The Landlords stated that J.M., D.B. and V.N. all continue to reside in the rental unit despite not having paid the full amount of rent owed, $1,500.00, each month, for August, September, October, November and December of 2020. As a result, the Landlords sought an order of possession for the rental unit as soon as possible.

The Landlords also sought recovery of the unpaid rent and authorization to withhold J.M.'s $312.50 security deposit towards rent owed.

Neither the Tenant J.M., the other tenants of the rental unit under the same tenancy agreement, D.B. and V.N., who were not named in either Application, nor an agent acting on their behalf, appeared at the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me from the Landlords, including a proof of service document, I am satisfied that the 10 Day Notice was posted to the door of the rental unit on September 14, 2020. Pursuant to section 90(c) of the Act, I deem it received three days later on September 17, 2020.

Section 46(1) of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Based on the documentary evidence before me, the affirmed testimony of the Landlords during the hearing, and the previous decision rendered on November 19, 2020 (the file number for which has been recorded on the cover page for this decision), I am satisfied that the written tenancy agreement was verbally amended to included D.B. and V.N., in addition to J.M., at the end of July 2020, and that rent was subsequently increased for the rental unit from $1,250.00 to $1,500.00 as there were now three tenants in the rental unit instead of just two. As a result, I am satisfied that rent in the amount of $1,500.00 was due on the first day of each month for the rental unit effective August 1, 2020.

Based on my finding above, and the uncontested documentary evidence and affirmed testimony before me from the Landlords, I am satisfied that rent in the amount of $1,500.00 was not paid on September 1, 2020, and that only $1,000.00 was paid towards September rent on September 11, 2020. As the full amount of rent owed was not paid as of the date the 10 Day Notice was served, I find that the Landlords were entitled to serve the 10 Day Notice in accordance with section 46 of the Act, but only for rent owed on or after September 1, 2020, and/or prior to March 18, 2020.

Although I find that the Landlords were not entitled to issue the 10 Day Notice for any portion of rent outstanding for August 2020, as the 10 Day Notice also referred to outstanding rent owed for September 2020, I do not find this error fatal. Although I also find that the amount owed according to the 10 Day Notice was incorrect, due to the inclusion of rent owed for August 2020, and the confusion on the part of the Landlords regarding the exact amount owed in rent per month, I also do not find this error fatal as I am satisfied that at least some amount of rent was owed on the date that it was served, as set out below.

As stated above, I am satisfied that rent in the amount of $1,500.00 was required to be paid by the tenants of the rental unit, J.M., D.B. and V.N., on the first day of each month. As I am satisfied that only $1,000.00 was paid on September 11, 2020, and that no subsequent rent payments for September were made by any of the tenants, I therefore find that $500.00 in rent was owed for September 2020, on the date the 10 Day Notice was served.

Although the Tenant J.M. disputed the 10 Day Notice, their Application was dismissed without leave to reapply and they did not appear at the hearing to provide any evidence or testimony for my consideration. Based on the above, as I am satisfied based on the Landlords affirmed testimony that no further rent for September was paid after the 10 Day Notice was served, and as I find that the 10 Day Notice complies with section 52 of the Act, I therefore find that the Landlords are entitled to an order of possession for the rental unit effective two days after service, pursuant to sections 55(1) and 68(2)(a) of the Act.

I also find that the Landlords are entitled to $5,150.00 in outstanding rent for August, September, October, November and December of 2020. Although the Landlords filed their Application only against the Tenant J.M., I find that J.M., D.B. and V.N. are all co-tenants of the rental unit under the same tenancy agreement. Pursuant to Policy Guideline 13, I find that the Landlords are therefore entitled to seek all unpaid rent from J.M., as co-tenants are jointly and severally responsible for the payment of rent and co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise, which I find it does not.

Pursuant to section 72(2)(b) of the Act, and as per the Landlords' request in the hearing, the Landlords are entitled to retain the Tenant J.M.'s $312.50 security deposit towards the above noted amount owed for outstanding rent. Pursuant to section 67 of the Act, the Landlords are therefore entitled to a Monetary Order in the amount of $4,837.50: $5,150.00 in outstanding rent owed, less the $312.50 security deposit retained.

Conclusion

The Tenant J.M.'s Application is dismissed, in its entirety, without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant J.M. or any other occupants of the rental unit, including but no limited to D.B. and V.N. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant or any other occupants or tenants of the rental unit fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **$4,837.50**. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to

comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant is cautioned that costs of enforcement are recoverable from them by the Landlords.

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: December 14, 2020

Residential Tenancy Branch