



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, OLC, OPR-DR, MNR-DR, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement.

The Property Manager stated that the Tenant mailed the Tenant's Dispute Resolution Package to the Landlord.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession, for a monetary Order for unpaid rent, for a monetary Order for money owed or compensation for damage or loss, to retain the security or pet damage deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord's Application for Dispute Resolution proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the *Act*, on October 07, 2021. That matter was reconvened as a participatory hearing, as the Adjudicator considering the matter was not satisfied the Landlord had established proof of service of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Legal Counsel for the Landlord stated that on September 17, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in September of 2021 was sent to the Tenant, via registered mail, at the rental unit. The

Landlord submitted Canada Post documentation that corroborates this testimony. On the basis of this undisputed testimony I find that these documents were served to the Tenant and the evidence was accepted as evidence for these proceedings.

Legal Counsel for the Landlord stated that on October 07, 2021 notice of this reconvened hearing and evidence submitted to the Residential Tenancy Branch on October 07, 2021 was sent to the Tenant, via registered mail, at the rental unit. Legal Counsel for the Landlord cited a Canada Post tracking number that corroborates this testimony. On the basis of this undisputed testimony I find that these documents were served to the Tenant and this evidence was accepted as evidence for these proceedings.

On October 26, 2021 and October 27, 2021, the Landlord submitted additional evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was sent to the Tenant, via registered mail, on October 26, 2021. On the basis of this undisputed testimony I find that these documents were served to the Tenant and this evidence was accepted as evidence for these proceedings.

In July and October of 2021, the Tenant submitted evidence to the Residential Tenancy Branch. As the Tenant did not attend the hearing to establish that this evidence was served to the Landlord, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant assured me that they would not record any portion of these proceedings.

Issue(s) to be Decided

Should a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside or should the Landlord be granted an Order of Possession on the basis of that Notice?
Is there a need to issue an Order requiring the Landlord to comply with the *Act*?
Is the Landlord entitled to compensation for unpaid rent, late fees, and/or strata fines?

Is the Landlord entitled to retain the security/pet damage deposit?

Background and Evidence

As the Tenant did not attend the hearing in support of her Application for Dispute Resolution, I find that she has abandoned her Application for Dispute Resolution. As the Tenant has abandoned her Application for Dispute Resolution, I dismiss her Application for Dispute Resolution, with leave to reapply.

Legal Counsel for the Landlord stated that:

- The Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which began on July 01, 2020 and ended on June 30, 2021;
- The Landlord and the Tenant entered into a second fixed term tenancy agreement, the fixed term of which began on July 01, 2021 and was to end on June 30, 2022;
- Rent of \$2,400.00 is due by the first day of each month;
- The Tenant paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00;
- The Tenant is still living in the rental unit;
- On August 10, 2021 the Landlord sent the Tenant a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, via email;
- In May of 2021 the Tenant gave the Landlord written authority to serve documents to the email address used by the Landlord;
- The aforementioned Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by August 24, 2021;
- When the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenant on August 10, 2021, the Tenant owed rent of \$2,400.00 for August of 2021;
- No rent has been paid for August, September, October, or November of 2021;
- The Landlord is seeking a monetary Order for August, September, October, and November of 2021;
- The Landlord is seeking late fees of \$100.00 as rent was not paid when it was due in August, September, October, and November of 2021;
- The Landlord is seeking compensation for 2 strata fines, each of which was \$200.00; and
- The strata fines were imposed because the Tenant allowed her dog to defecate on the balcony.

The Landlord submitted documents which corroborate the submission that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served by email on August 10, 2021 and that the Landlord had the right to serve documents to the Tenant by email.

Analysis

On the basis of the undisputed evidence, I find that the Tenant is required to pay rent of \$2,400.00 by the first day of each month and that the Tenant has not yet paid rent for August of 2021.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As the Tenant has not paid rent for August of 2021, I find that the Tenant owes the Landlord rent of \$2,400.00 for that month.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was emailed to the Tenant on August 10, 2021. On the basis of the testimony that the Tenant gave the Landlord authority to serve documents to her by email, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served in accordance with section 88 of the *Act*.

As rent for August of 2021 has not been paid and the Tenant was properly served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord an Order of Possession, which is effective on November 30, 2021.

As the Tenant has not vacated the rental unit and the Order of Possession entitles her to remain in the rental unit until November 30, 2021, I find that she must pay the Landlord \$7,200.00 in rent for the period between September 01, 2021 and November 30, 2021.

Section 7(1)(d) of the Residential Tenancy Regulation stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The tenancy agreement, which was submitted in evidence, stipulates that the Tenant must pay a late fee of \$3.00 per day if rent is not paid on time, which is between \$84.00 and \$93.00 per month, depending on the month. I find that the term of the tenancy agreement regarding late fees does not comply with the legislation, and I therefore dismiss the Landlord's application for a monetary Order for late payment of fees. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a later payment fee of no more than \$25.00.

On the basis of the undisputed evidence I find that the Landlord received two strata fines, totalling \$400.00, because the Tenant permitted her dog to defecate on their balcony. I therefore find that the Tenant must pay the Landlord \$400.00, pursuant to section 67 of the *Act*.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply.

I grant the Landlord an Order of Possession that is effective on November 30, 2021. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$10,100.00, which includes \$9,600.00 in rent; \$400.00 in strata fines; and \$100.00 for the fee paid to file this Application for Dispute Resolution. Pursuant to section &2(2) of the *Act*, I authorize the Landlord to retain the Tenant's security/pet damage deposit of \$2,400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$7,700.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 15, 2021