



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAIGHTON MANOR APTS. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, CNR
 OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with two separate Applications for Dispute Resolution that were filed by the Tenant and/or an occupant of the rental unit, under the *Residential Tenancy Act* (the Act). The first Application was filed on June 27, 2022, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- An order restricting or setting conditions on the Landlord's right to enter the rental unit.

The second Application was filed on July 4, 2022, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice).

This hearing also dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Landlord under the Act on July 10, 2022, seeking:

- Enforcement of the 10 Day Notice by way of an Order of Possession;
- Recovery of unpaid rent;
- Retention of a security deposit and/or pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. on November 14, 2022, and was attended by the agent for the Landlord K.O., who provided affirmed testimony. No one appeared on behalf of the Tenant and/or occupant.

The Agent was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being

muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that respondents must be served with a copy of the Application and Notice of Hearing. As the Tenant and occupant did not attend the hearing, I inquired with the Agent regarding service of the documents as explained below. The Agent stated that the notice of dispute resolution proceeding (NODRP), which includes a copy of the Cross-Application and the notice of hearing, as well as the documentary evidence before me on behalf of the Landlord, was personally served on an adult who apparently resides with the Tenant at the rental unit, (the occupant L.A./T.H.) by another agent for the Landlord S.F., in their presence, within the three-day timeline set out under the Act and the Rules of Procedure. Residential Tenancy Branch (Branch) records indicate that the NODRP was emailed to the Landlord on July 22, 2022, for service by July 25, 2022. Based on the affirmed testimony of the Agent, and in the absence of any documentary or other evidence to the contrary, I find that the NODRP and the documentary evidence before me on behalf of the Landlord was personally served on the Tenant, and/or sufficiently served for the purposes of the Act, no later than July 25, 2022, pursuant to sections 88(e), 89(1), and 71(2)(b) of the Act and rule 3.1 of the Rules of Procedure.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the NODRP for the hearing was correct, and I note that it also provides information on how to attend the hearing. Further to this, I note that the Agent had no difficulty attending the hearing on time using this information. Additionally, the Tenant and/or occupant L.A./T.H. filed two separate Applications with which the Landlord's Application was crossed, all of which were to be heard before me during the same hearing at 11:00 A.M. on November 14, 2022. Branch records indicate that the NODRP for the Tenant/occupant's own Applications was emailed to them on July 14, 2022, at the e-mail address provided by them for this purpose in their Applications. As such, I am satisfied that even if the Tenant R.H. and/or the occupant L.H./T.H. had not received the Landlord's NODRP, they nonetheless received notice of the hearing from the Branch by e-mail on July 14, 2022, as a result of their own Applications. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenant and occupant had ample notice of

the date and time of the hearing, and information on how to attend, I therefore commenced the hearing as scheduled at 11:00 A.M. on November 14, 2022, despite the absence of the Tenant, the occupant, or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure. Although the teleconference remained open for the full duration of the 23-minute hearing, no one attended the hearing on behalf of the Tenant or occupant.

Although I have reviewed all evidence and testimony before me that was accepted for consideration 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 Agent, a copy of the decision and any orders issued in favor of the Landlord will be e-mailed to them at the e-mail address provided at the hearing.

Preliminary Matters

At the hearing the Agent stated that only R.H. is listed as a tenant under the tenancy agreement. In reviewing a copy of the tenancy agreement in the documentary evidence before me, I note that only one tenant, R.H., is listed as a tenant under the tenancy agreement and that no occupants are listed. Although the Agent acknowledged that L.A., also known as T.H., is believed to be residing in the rental unit, and has identified themselves as the Tenant's spouse, they stated that only R.H. is a tenant under the tenancy agreement and that L.A./T.H. is therefore an occupant.

Based on the uncontested affirmed testimony of the Agent and the tenancy agreement in the documentary evidence before me, I am satisfied that only R.H. is a tenant under the tenancy agreement and that L.A./T.H. is therefore an occupant. Residential Tenancy Policy Guideline (Policy Guideline) #13, section H states that if a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agreed to amend the tenancy agreement to include the new person as a tenant. As there is no evidence before me that the tenancy agreement was amended to include L.A./T.H. as a tenant, I therefore find that they have no rights or obligations under the Act or the tenancy agreement. As the Application seeking cancellation of a One Month Notice and an order restricting or setting conditions on the Landlord's right to enter the rental unit was only filed by and on behalf of L.A./T.H. and does not name the Tenant R.H. as an applicant, I therefore dismiss this application without leave to reapply for lack of jurisdiction as the applicant is an occupant of the rental unit, not a tenant.

The hearing therefore proceeded based only on the Landlord's Cross-Application and the second Application filed by both the Tenant and the occupant L.A./T.H. seeking cancellation of the 10 Day Notice.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed-term tenancy began on October 1, 2021, that rent in the amount of \$1,650.00 is due on the first day of each month, plus \$25.00 per month for parking, and that a security deposit in the amount of \$825.00 was paid, along with a \$50.00 garage key fob deposit. The Agent stated that these are the correct terms for the tenancy agreement, and that the deposits are still held by the Landlord in trust.

The Agent stated that when the Tenant did not pay rent as required on July 1, 2022, the 10 Day Notice was personally served on an adult who apparently resides in the rental unit with the Tenant, L.A./T.H., by their spouse S.F., in their presence, on July 2, 2022. A witnessed and signed proof of service document was submitted for my consideration in support of this testimony. The 10 Day Notice before me is signed and dated July 2, 2022, has an effective date of July 12, 2022, and states that rent in the amount of \$1,675.00, due on July 1, 2022, remains unpaid.

The Agent stated that the Tenant has not paid any rent since service of the 10 Day Notice and therefore sought an Order of Possession for the rental unit as soon as possible and \$7,481.66 in outstanding rent and parking fees up to and including the date of the hearing, November 14, 2022, calculated at a per diem rate of \$55.83 per day in November of 2022. The Agent also sought authorization to withhold the \$825.00 security deposit held in trust by the Landlord in partial repayment of unpaid rent and the filing fee.

The Agent stated that although a truckload of possessions left the rental unit approximately one week ago, they are not sure if the Tenant and/or occupant still reside in the rental unit and that a letter was posted to the door of the rental unit by the Tenant and/or the occupant stating that the Landlord is prohibited from entering the rental unit as they still reside there.

Analysis

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. However, sections 46(4) and 46(5) of the Act also state that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88(e) of the Act, I find that the Tenant was served with the 10 Day Notice on July 2, 2022, the day I am satisfied that it was personally served on an adult who resides with the Tenant. I also find that the Tenant was obligated to pay monthly rent and parking fees in the amount of \$1,675.00, on time and in full on the first day of each month. Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that \$1,675.00 in rent and parking fees was due at the time the 10 Day Notice was served, and that the Tenant did not pay this amount. Although the Tenant and the occupant L.A./T.H. filed an application for dispute resolution with the Branch seeking cancellation of the 10 Day Notice on July 4, 2022, which I find is within the five-day time period set out under section 46(4)(a) of the Act, no one appeared at the hearing on behalf of the Tenant or the occupant to provide any evidence or testimony for my consideration with regards to whether the Tenant had a right under the Act to withhold or deduct that rent. I therefore find that they did not. As a result, I dismiss the Tenant's Application seeking cancellation of the 10 Day Notice without leave to reapply, and I grant the Landlord's Application seeking its enforcement. As I am satisfied that the 10 Day Notice complies with section 52 of the Act and the effective date of the 10 Day Notice has passed, I therefore grant the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant, pursuant to sections 55(1) and 68(2)(a) of the Act. I also order the Tenant and all occupants to vacate the rental unit in compliance with that Order of Possession.

As I am also satisfied that the Tenant has not paid any rent since before the 10 Day Notice was served, and therefore owes rent for July 1, 2022, - November 14, 2022, the date of the hearing, I therefore find that the Landlord is entitled to the \$7,481.66 in compensation sought for outstanding rent and parking fees. If the Landlord incurs additional expenses related to the Tenant's overholding of the rental unit after the date of the hearing, the Landlord may seek recovery of these costs by filing an application for dispute resolution with the Branch seeking recovery of these costs from the Tenant.

Pursuant to section 72(1) of the Act, I also award the Landlord recovery of the \$100.00 filing fee. Pursuant to section 72(2)(b) of the Act, and in accordance with the Agent's request, I therefore authorize the Landlord to withhold the \$825.00 security deposit in partial recovery of the above owed amounts. Pursuant to section 67 of the Act I grant the Landlord a Monetary Order in the amount of \$6,756.66, for the remaining balance owed.

Conclusion

The Tenant's Application seeking cancellation of the 10 Day Notice is dismissed without leave to reapply. The Application filed by only the occupant seeking cancellation of a One Month Notice and an order restricting or setting conditions on the Landlord's right to enter the rental unit is also dismissed without leave to reapply due to lack of jurisdiction.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **Two days after service on the Tenant**. The Landlord is 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 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 **\$6,756.66**. The Landlord is 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.

Pursuant to section 72(2)(b) of the Act, the Landlord is also permitted to retain the **\$825.00** security deposit.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 14, 2022

Residential Tenancy Branch