



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPB OPR MND MNDC MNR FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent. The hearing was originally set for October 30 and was reconvened on December 1. The landlord participated in both hearings as did the tenant F.C. The tenant A.C. participated only on December 1.

Issue(s) to be Decided

Are the tenants obligated to pay rent under a tenancy agreement?

Is the landlord entitled to an order of possession?

Background and Evidence

There was some dispute between the parties as to when the tenancy began. The tenants testified that the tenancy began in the last week of May 2007. The landlord took the position that the tenancy began on May 1, 2007. The landlord provided a copy of a tenancy agreement dated June 1, 2007 and signed by the tenant which provides that the tenancy began on May 1 and that rent in the amount of \$775.00 was payable each month. The tenant testified that while she recalls signing a document at the beginning of June, that she did not sign the tenancy agreement. The tenant claimed that the landlord came to her place of work with a document which dealt with the upkeep of the property and that she did not have time to thoroughly read the document, but was sure that it was not a tenancy agreement. The tenants claimed that the landlord used the signature of the tenant on another document and taped the signature on to the tenancy

agreement to make it appear that the tenant had signed a tenancy agreement. The landlord testified that the tenancy agreement was on an 8.5" x 14" paper and that when he photocopied the document to give the tenants a copy, he photocopied the document onto an 8.5" x 11" page which cut off the signature line, which he photocopied separately and taped onto the agreement so the tenants would have a complete copy of the agreement. The tenants had previously submitted their taped copy of the agreement as evidence for a previous hearing. At the October 30 hearing I asked the tenants to request that the originals be released from the previous file and adjourned the hearing to allow time for the originals to be released back to the tenants and submitted in evidence for this hearing. Due to an administrative oversight, the taped agreement was not returned to the tenants and remains in the file for the earlier hearing. However, at the reconvened hearing I was able to retrieve the file for the earlier hearing and had the opportunity to examine the document.

The tenants took the position that they had an agreement with the landlord that they would not be required to pay rent in exchange for their labour on the rental unit. The tenants testified that they painted the interior of the home, purchased appliances at their own cost and assisted in the installation of flooring. The landlord agreed that the tenants had performed the labour as described and provided into evidence a copy of an accounting ledger showing that the tenants had been credited with \$775.00, which he claims is the equivalent of one month's rent, to compensate them for their labour.

The tenants testified that it took them approximately 5-6 months to complete the labour in the rental unit. The tenants acknowledged that they knew rent would have to be paid after labour was completed, but testified that they were unable to reach an agreement with the landlord respecting how much they should be compensated for their labour.

The landlord's rent ledger shows that the tenants made a \$775.00 rental payment in June which was returned for insufficient funds on June 30. The tenants made a payment of \$1,275.00 on August 3 and a payment of \$775.00 on August 29. The tenants made a further payment of \$775.00 on April 30, 2008 which was returned for insufficient funds. A \$400.00 payment was made on May 16, 2008. When asked why they were making payments to the landlord when they believed they were not obligated to pay rent, the tenants replied that the landlord had said that he could not afford to

continue buying supplies to repair the rental unit if they didn't give him something for rent.

The landlord testified that he served a 10-day notice to end tenancy on September 19 by placing the notice in the tenants' mailbox. The landlord said a neighbour witnessed him delivering the notice but when the neighbour was contacted during the hearing, she testified that she could not recall having seen the landlord deliver the notice. The tenants acknowledged having received the notice on September 25. When asked why he did not evict the tenants earlier, the landlord replied that the tenants continually made promises that money would be available soon and that arrears would be paid, thereby encouraging the landlord to wait for rent payments.

Analysis

When a landlord alleges that rent is unpaid, the burden shifts to the tenants to prove that rent is not owing. Having reviewed the testimony and evidence of the parties, I find that the tenants have not met that burden. I find that although the tenant may not have appreciated the nature of the document she was signing, she signed the tenancy agreement which the tenants now claim was manufactured by the landlord. I have arrived at this conclusion for a number of reasons. I find the landlord's explanation as to why the signature line on the tenants' copy was taped onto the agreement to be plausible and as the tenancy agreement contains specific provisions regarding the upkeep of the property, it seems likely that this is the document the tenant hurriedly scanned at the beginning of June 2007.

As for the amount of rent that is to be paid each month, I do not accept the tenants' testimony that no rent was payable in exchange for labour. The behaviour of the tenants shows that an agreement was in place for the tenants to pay \$775.00 per month. The tenants made a rental payment in that amount in June 2007, which was returned for insufficient funds. It does not make sense that the tenants would pay that specific amount in order to subsidize the materials to repair the rental unit if there were truly an agreement between the parties that the tenants were to live rent-free in exchange for their labour. The fact that a number of subsequent payments were made or attempted strengthens this conclusion. Further, the tenants acknowledged that they

knew rent would be payable when the labour was completed. This coupled with the specific amount of \$775.00 which was tendered on three occasions has persuaded me that the tenants were obligated to pay \$775.00 per month in rent.

As the landlord has not claimed rent for the month of May, it is unnecessary for me to make a finding as to when the tenancy began. Because the landlord forgave rent owing for June 2007, I find that the tenants were obligated to pay \$775.00 per month beginning in the month of July 2007. Up until the date of this decision, the tenants were obligated to pay a total of \$13,950.00. The tenants also owe 2 NSF fees of \$25.00 each for cheques issued in June 2007 and April 2008 for a total liability of \$1,400.00. The tenants made a total of \$2,450.00 (not including the NSF cheques) which reduces the amount owing to \$11,550.00. The landlord claimed \$10,000.00 and I find that the landlord has established his claim. The landlord is also entitled to recovery of the \$100.00 filing fee and I grant the landlord an order under section 67 for \$10,100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court. The landlord has liberty to make a future application to recover arrears of \$1,550.00, which represents rent owing for November and December.

The tenants acknowledged having received the notice to end tenancy on September 25, 2008. Although the notice to end tenancy states that \$9,225.00 was due on September 1, 2007, I find that this was a simple error in recording the year and does not invalidate the notice as there is no suggestion that the tenants were in any way misled by the error and did not even present this as an issue at the hearing. The tenants did not pay the outstanding rent and did not apply for dispute resolution to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I find that the landlord is entitled to an order of possession. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$10,100.00.

Dated: December 04, 2008.