



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

AMENDED DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order and an order permitting the tenants to reduce rent for repairs. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The landlord's representative testified that he was hired to manage the subject property pursuant to a court order pronounced by the Supreme Court in matrimonial proceedings between the respondent and her husband, L.K. He served the applicant with a 10 day Notice to End Tenancy for unpaid rent by registered mail sent on August 11, 2010. The Notice to End Tenancy alleged that the occupants of the rental property failed to pay rent of \$3,600.00 that was due on August 1, 2008. According to the landlord's representative the respondent has never paid rent and managed to enter into possession of the property without entering into any form of written tenancy agreement. He said that the amount of rent claimed by the Notice was based on advice from the respondent as to the rental value for the property.

The rental property is a single family residence on an acreage. According to the applicant in April, 2010 he met with Mr. L. K. Who implored him to live in his house to do

some work and care-take the property for him. He said that he is in the business of renovations. The applicant testified that after L.K. met with him at his house and saw how well kept it was, he begged the applicant to move to his house and look after it for him. He said that it was agreed that rent for the property would be \$800.00 inclusive of all utilities and rent was to start on June 1st. The applicant said that he brought in a crew of six men to work on the property. He said that he paid L.K. \$800.00 cash on June 1, 2010, but L. K. gave the money back and told him to use it to pay the men who were working for him at the property. The applicant said he purchased \$1,600.00 worth of lumber to construct new stairs and an entrance way at the house. He also said that he expended money to fix the septic system after it flooded the house. He said he did so with the permission of the landlord's representative. He suggested that the money he expended was in lieu of rent.

Mr. L. K. testified on behalf of the respondent. He said that he never consented to rent the property to the applicant. He said that the applicant was a friend of G.R. an individual who occupied a different property that had been under his control and the applicant managed to get possession without permission from L.K. through his connections with G.R. The respondent has taken steps to evict G.R. as well as the applicant. L. K. testified that after the applicant moved into the property he told the applicant that he would have to pay rent and he would also have to pay for the utilities, but no money has ever been paid for rent or for utilities. He denied that he hired the applicant to do any work on the property and he said that apart from some trees that the applicant cut down, there was little or nothing in the way of work that had been performed.

The landlord's representative said that the applicant spoke to him by telephone on or about July 5, 2010 with respect to the septic systems and some flooding. He told the applicant that he had not yet been hired to manage the property and he had no authority to authorize any work. The landlord's representative testified that he was later hired to manage the property in July and after his appointment he visited the property and met with the applicant on July 13, 2010. He said the property was in poor shape and he did

not see any noticeable evidence that the applicant had done any work to the property. The landlord's representative testified that the applicant told him that there was a written tenancy agreement between the applicant and Mr. L.K.; he arranged to meet with the landlord's representative the following day to give him a copy of the agreement. The landlord's representative said he met the applicant, but no tenancy agreement was produced; he said that the applicant claimed that L. K. or someone else took his copy of the agreement when he was away from the property.

Analysis and conclusion

The applicant's descriptions of his dealings with Mr. L. K are contradicted by L.K. in almost every particular. The applicant testified that he has performed extensive work on the property in lieu of rent, but the landlord's representative said that when he visited the property on July 13, 2010 there was little or no indication that any meaningful work had been done and the property was, as he put it: "quite a mess". Mr. L.K. also said that the applicant had not done any meaningful work apart from cutting several trees. I accept and prefer the evidence of Mr. L.K. and the evidence of the landlord's representative to that of the applicant with respect to the condition of the property and the absence of work performed by the applicant.

I do not accept that the amount stated in the Notice to End Tenancy is a correct statement of the amount of rent outstanding. I do find that the tenant occupied the rental unit pursuant to a clear understanding that he was obliged to pay rent. If I accept the applicant's testimony that he was to pay rent of \$800.00 per month commencing June 1, 2010, the evidence shows that no rent has been paid from June 1, 2010 to October 1, 2010. I find that in the absence of evidence to show that the applicant has paid any amount for rent his application to cancel the Notice to End Tenancy must be dismissed without leave to reapply. The application is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord,

I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. I grant the landlord an order for possession effective two days after service on the applicants. The applicant must be served with the order of possession. Should the tenant 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.