



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF
 CNR RR FF

Introduction

This hearing dealt with cross applications filed by both the Landlord and the Tenant. The Landlord filed seeking an Order of Possession for unpaid rent, and a Monetary Order for unpaid rent and to recover the cost of the filing fee.

The Tenant filed seeking an Order to cancel the Notice to end Tenancy for unpaid rent, for reduced rent for services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

Issue(s) to be Decided

1. Has a 10 Day Notice to End Tenancy been issued to the Tenant as named in the tenancy agreement?
2. Has an application for dispute resolution been filed against the Tenant as named in the tenancy agreement?

Background and Evidence

The Agent who appeared on behalf of the Landlord introduced himself as a lawyer who was at the hearing on behalf of the Landlord named in the Landlord's application and as named in the tenancy agreement. He confirmed there were no documents submitted into evidence that would support that the Landlord requested he act on the Landlord's behalf rather than the Landlord's Agent who signed the hand written tenancy agreement and who is named as the Landlord's Agent on the 10 Day Notice. He was not able to provide dates of when the application for dispute resolution was initially served to the Tenant and stated that it was later served via registered mail as supported by the evidence.

The assistant who appeared on behalf of the Tenant provided affirmed testimony that she was the Tenant's sister. She confirmed there was no evidence provided to indicate her sister wished her to represent her at the hearing.

A review commenced of the two applications for dispute resolution and the 10 Day Notices that were provided into evidence. After questioning the Landlord's Legal Counsel about the Tenant's name he advised that the Tenant had a different surname listed on the cheques she provided for rent than the surname that was listed on the tenancy agreement. I noted that the name listed on the 10 Day Notice and the Landlord's application for dispute resolution was neither of the names used by the Tenant. I also noted that the male Tenant's name, while listed on the hand written tenancy agreement, was not listed on any other documents.

The Tenant's assistant engaged in a conversation with the Landlord's Counsel about issuance of a mail key and asked "well how am I supposed to get my mail". After this discussion I questioned the assistant about her identity and reminded her that she accepted the affirmation to tell the truth. I found her response to be less than credible as she continued to speak in and out of the role of a third person.

Analysis

Landlord's application

The Landlord's application and the 10 Day Notice have been issued against a tenant with the surname "XXXXX". I note that the evidence supports the Tenant uses cheques that are issued with the surname "XXXXX" and she signed the tenancy agreement and made her application for dispute resolution with the surname "XXXX". There is no evidence before me that the supports Counsel's argument that the name XXXXXX was ever used. Rather it appears the Landlord or his agent combined the two surnames.

When seeking legal action against another party the person making the application needs to ensure the person named in the dispute is in fact the person they are seeking action against. As the person listed on the 10 Day Notice and the Landlord's application for dispute resolution is not the Tenant, I hereby dismiss the Landlord's claim without leave to reapply. Furthermore, I find the 10 Day Notice to end Tenancy that was issued July 12, 2011 to be invalid.

In this case the Landlord's application would have been accepted had the documents been issued indicating the two separate surnames that were being used by the Tenant, such as: "XXXXXX" which is supported by the Landlord's evidence.

If rent remains unpaid the Landlord is at liberty to issue another 10 Day Notice and file a new application for dispute resolution.

The Landlord has not been successful with his application and therefore must bear the burden of the cost to file his application.

Tenant's application

In the course of this proceeding and upon review of the Tenant's application, I have determined that I will not deal with all the dispute issues the Tenant has placed on her application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request to cancel the Landlord's Notice to End Tenancy, and I dismiss the balance of the Tenant's claim with leave to re-apply.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the assistant's explanation of whom she was and why she attended the hearing on behalf of the Tenant improbable given that she continued to provide testimony in and out of third person language. That is to say she would speak saying "I" as if she was the Tenant.

Upon careful examination of the Tenant's application I find there to be insufficient evidence to support her claim that rent was paid.

As per the aforementioned reasons I hereby dismiss the Tenant's application, without leave to reapply.

The Tenant has not been successful with her application and therefore must bear the burden of the cost to file her application.

Conclusion

The 10 Day Notice to End Tenancy issued July 12, 2011 is hereby CANCELLED, and is of no force or effect.

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: August 23, 2011.

Residential Tenancy Branch