



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied to cancel a Notice to end tenancy for unpaid rent. Tenants M.S., D.G., K.W. were co-applicants.

The hearing process was explained to the participants, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

On September 27, 2012 the landlord submitted an application which named 5 respondents. That application included a claim in the sum of \$5,242.50 for unpaid rent owed between June 2012 and October 2012, plus loss of November 2012 rent revenue.

On September 29, 2012 the landlord amended the application requesting compensation for unpaid rent from June 2011 to October 2012 and loss of revenue for November 2012, in the sum of \$4,667.50. At the hearing the landlord amended the monetary claim to \$3,717.50 for unpaid rent from June 2011 to October, 2012; the claim for loss of November rent revenue was withdrawn.

Each respondent named in the landlord's application was served with Notice of the hearing, sent via registered mail to the rental unit address. Canada Post receipts and tracking numbers for all respondents were supplied as evidence of service.

The respondents K.W. and D.G. and M.S., who were present at the hearing, confirmed receipt of the Notice of hearing and the landlord's evidence.

K.W. stated that A.G. is his seventeen year old son who resides with him in the rental unit. I determined that A.G. had been served with Notice of the hearing.

There was no evidence before me in relation to J.W.'s status. The landlord testified that J.W. had signed a separate tenancy agreement in November 2008, to rent a completely different unit than K.W. The tenants stated that J.W. vacated the rental unit 3 years ago.

The landlord confirmed receipt of the tenant's application and evidence submissions.

The landlord's agent, D.G. entered the hearing 6 minutes after the hearing had commenced. At one point during the hearing, when I asked this agent a critical question; I did not receive a response. The agent had called into the conference call hearing on a separate line and his name was announced as he entered the call; this is a function of the conference call hearing system. No announcement was made indicating that D.G. had exited the call; these announcements are made when a participant has exited a hearing and provided a recorded name at the start.

After several attempts to elicit a response from D.G. the 2nd agent for the landlord stated D.G. had exited the hearing. As D.G. had entered the hearing with his recorded name announced; his name would have again been announced as he exited. Further, D.G. continued to show as a participant on the conference call console. I then determined that I would delete the landlord telephone lines from the conference call and asked that the landlord dial back into the hearing. As I deleted the landlord's 2 lines, both landlord names were announced as the lines disconnected; again a function of the conference call system. Agent S.J. immediately dialled back into the hearing. S.J. said that agent D.G. was present in the building and I encouraged her to have D.G. call back into the hearing; however, he did not and my question to him went unanswered.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Background and Evidence

The landlord's application included a calculation for unpaid rent as follows:

	Owed
July 2011	187.00
August 2011	325.00
September 2011	375.00
December 2011	950.00
January 2012	375.00
February 2012	375.00
March overpaid 370.00	
April 2012	375.00
September 2012	375.00
October 2012	375.00
Sub Total	4087.00
Less a March 2012 – over payment of 370.00	3,717.00
TOTAL CLAIMED	\$3,717.00

At the start of hearing a lengthy discussion took place in relation to the status of the individuals named as respondents on the landlord's application.

The 3 respondents present at the hearing all confirmed that at some point they had made individual rent payments either directly to the landlord's office or to an agent of the landlord.

The respondents are:

1. K.W. who signed a tenancy agreement for unit 201 on November 1, 2008;
2. M.S. who has not signed a tenancy agreement. M.S. states she lived in the unit for approximately 1 year and vacated in August 2012;
3. A.G. who is K.W.'s seventeen year old son;
4. D.G. who states he moved into the unit in September 2012; and
5. J.W. who signed a tenancy agreement for unit 311, in November 2008; the landlord states J.W. shows on their records as a tenant in unit 209.

The landlord had a copy of K.W.'s written tenancy agreement; it was not supplied as evidence. The parties agreed that K.W. has moved throughout the fifty-seven unit building at least 5 times since 2008. No new tenancy agreements were signed; it appears the deposit was not returned and repaid each time the tenant moved and there was no evidence submitted showing that of any condition inspection reports were completed.

The landlord confirmed they are holding a deposit in the sum of \$375.00 which was paid in November 2008.

M.S. testified that she made 5 or 6 individual payments to the landlord's previous agent, L. and that she never received receipts for these cash payments. When the landlord's agent was asked if it was possible cash payments were not accompanied by receipts, the agent replied that she did not know. The landlord pointed out that their records do show some payments made in addition to those made directly by K.W.

D.G. stated he has sent the landlord 2 payments in the sum of \$375.00 each to cover the balance of rent owed for October and November, 2012. The advocate said that notes made by another advocate show 2 cheques in the sum of \$375.00 were sent via courier service to the landlord on October 3, 2012. The landlord stated she had not seen these cheques and that no one else in the organization would have received them.

The landlord has received \$575.00 rent from K.W. for September and October 2012 rent owed. K.W.'s rent cheques go directly to the landlord as they are issued by a government agency; those cheques have been deposited throughout the tenancy.

S.A. stated that no rent was received in December 2011; however, the tenant's advocate pointed to a "Tenant AR breakdown" which included notes indicating that "according to December's rent roll, it was noted that they received a cheque of \$575.00, but it wasn't listed in all deposits for December."

The parties agreed that on September 5, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 18, 2012, was served to the tenants. This Notice was issued by the landlord's agent D.G. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$375.00 within five days after the tenants were assumed to have received the Notice. The September 5 Notice submitted as evidence named tenants J.W. and M.S. only. The landlord's agent S.A. said there should have been a schedule of parties issued, naming other tenants, however; a copy of a schedule was not supplied.

K.W. stated that rent was paid when the September 5, 2012 Notice was issued, so the Notice was not disputed. The landlord stated that they withdrew the Notice.

I asked the landlord's agent D.G. why a Notice was issued in the sum of \$375.00 owed on September 1, 2012 and then a 2nd Notice issued several weeks later in a sum of \$3,342.50. D.G. did not reply to my repeated question, requesting details on the amount of rent that was thought to be owed by the tenants on September 5. It was suggested D.G. had exited the hearing; this is referenced under preliminary matters, above. S.A. stated that the September 5, 2012 Notice was issued in error.

A 2nd 10 Day Notice to End Tenancy for Unpaid Rent was issued on September 21, 2012, for \$3,342.50 in unpaid rent due September 1, 2012. The September 21, 2012

Notice was accompanied by a Schedule of Parties, naming tenants M.S., D.G., K.W., A.G. and J.W.

The landlord supplied a number of tenant ledger documents dating back to June 2011. Up to November 2011 inclusive these ledgers were handwritten; from December 2011 onward the ledgers were typed and provided more detailed information. From June 2011 onward the ledgers included the last names of K.W. and M.S. In all months, with the exception of December 2011, payments of \$575.00 were indicated, in other months record of multiple payments was notated.

A copy of a September 26, 2012 Government of BC cheque issued on behalf of K.W. to the landlord, was provided as evidence. The cheque was mailed directly to the landlord, for deposit for October rent.

S.A. stated that she was retained by the landlord in September 2012 in order to assist the landlord in rectifying the rent arrears situation. S.A. had reviewed the ledgers supplied by the landlord in order to determine the amounts that were ultimately claimed in the amended application.

K.W. stated that he understood rent was \$950.00 per month and that other individuals had lived with him and paid the balance owed each month, above the \$575.00 that was sent directly to the landlord. K.W. stated he had an agreement with a previous agent of the landlord, L., that he would pay \$575.00 per month and that others would pay \$375.00 per month as he could not afford the total rent.

K.W. acknowledged that previous Notices had been issued prior to June 2011, and that whenever a problem with payment had occurred the rent was paid. K.W. wondered how rent arrears could have escalated to over \$3,000.00 since June 2011, without the landlord having said something. When K.W. saw the September 5, 2012 Notice the arrears were paid. Then the September 21, 2012 Notice was issued and he did not understand how the landlord had calculated rent owed back to June 2011. The Notice was then disputed by three of the named respondents.

At one point during the hearing S.A. submitted that the application should be amended to remove respondent J.W.

Analysis

The landlord has the burden of proving, on the balance of probabilities, that the tenants owe rent, as claimed.

The respondents present at the hearing confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid rent issued on September 21, 2012. They also saw a 10 Day Notice issued on September 5, 2012.

Once K.W. moved from the original unit he had rented in 2008, I find that the initial written tenancy agreement came to an end. At this point, each time K.W. moved into a new unit, another tenancy was created, with verbal terms, at which point a move-in and move-out condition inspection report should have been completed; there was no evidence before me that this occurred.

K.W. did not dispute that he is a tenant of the unit in dispute and that total rent owed is \$950.00 per month. He also confirmed that others live with him so that the total amount of rent owed can be paid.

I find that the status of the tenancies of those individuals is in question and was not proven. Five individuals were named as respondents who, from the evidence before me, came and went and who may have made individual payments to agents of the landlord.

In relation to the monetary claim for unpaid rent I have determined that I cannot rely upon the evidence and testimony provided, in support of the Notice to end tenancy issued on September 21, 2012. There were inconsistencies in the landlord's submission which affected my ability to accept the claim made by the landlord.

Reliability of the claim was affected by:

- Testimony given and written submissions and a claim made that no rent was paid in December 2011;
- A conflicting written record supplied by the landlord which indicated December rent in the sum of \$575.00 had in fact been received but not deposited to the landlord's account;
- The possibility that a past agent of the landlord was accepting cash rent payments without having issued receipts as required by the Act;
- The absence of any reliable records confirming the status of all respondents named;
- The Notice ending tenancy issued September 5, 2012 indicating \$375.00 was owed, and then a Notice issued on September 21, 2012 indicating \$3,342.50 was in fact owed;
- A claim made against a seventeen year old occupant, in the absence of any evidence of his status as a tenant; and
- The conflict between the landlord's records that J.W. was a tenant and the absence of any evidence of the status of J.W.

There was testimony that rent payments for October and November, 2012 in the amount of 2 cheques for \$375.00 had been sent to the landlord by courier. I was not convinced that the courier delivery was not made to the landlord. Initially the agent said she had not seen the cheques; then the agent said no one else would have seen the cheques; however, I was not convinced on the balance of probabilities, that this was the case.

My confidence in the landlord's record-keeping and management of the tenancy was diminished, leading me to conclude that I could not rely upon the submissions in relation to rent payments. In order to do so I would have had to take a leap of faith. I cannot, with any confidence, conclude what amount of rent was owed by which respondent named. In fact, it appeared that during the hearing the landlord wished to alter their submission, first indicating that J.W. was a tenant, then requesting he be removed as a respondent. Either J.W. was responsible for paying rent or he was not; his status, whether as a co-tenant or tenant-in-common, was unclear.

As the monetary claim has failed I find that the Notice issued ending the tenancy effective October 1, 2012 is of no force and effect.

I have not made any finding in relation to the current status of those residing in the unit.

Conclusion

The monetary claim is dismissed.

The 10 Day Notice to End Tenancy for Unpaid Rent issued on September 21, 2012 is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 02, 2012.

Residential Tenancy Branch