



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding G. Powroznik Group Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, AAT, AS, CNC, CNR, MNDC, MNSD, MT, O, OPT, RR

Introduction

This was the hearing of applications by the landlord and by the tenants. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord was represented by

Issue(s) to be Decided

Is the landlord entitled to an order of possession or should the Notice to End Tenancy be cancelled?

Is the landlord entitled to a monetary order?

Are the tenants entitled to any other relief, including a monetary order?

Background and Evidence

In 2011 a corporation directed by the respondents entered into a commercial tenancy agreement with the landlord P.T.P. Ltd. to rent two units in a mixed use commercial residential building in Pemberton. The schedule to the lease referred to a third unit, described as a hotel suite and contained the following provisions:

Lease Space: Hotel Suite #201 (includes furniture, dishes, linens, fixtures currently in suite)

Lease Term: Residential Tenancy Leas for 1 year. Commercial use allowed

Lease Commencement Date: 01 June 2011 (to 31 May 2012)

Lease Payment Date: First of every month, commencing 01 June 2011

Lease Cost: \$14,400/year - \$1,200 per month: includes cable and hydro

Parking: 1 space inside gate

On September 26, 2011 the respondents signed a standard form residential tenancy agreement with PTP Ltd. for the rental of unit 201. The tenancy was for a one year term from June 15, 2011 to June 15, 2012 and thereafter month to month, with rent in the amount of \$1,200.00 payable on the 15th of each month.

The personal respondents occupy the rental unit and use it as their residence.

On November 28, 2011 The Supreme Court of British Columbia appointed the applicant Corporation to be the receiver of the landlord, P.T.P. Ltd. The Court granted the applicant power to manage the business and property of the landlord. There is no dispute that the property over which the applicant was appointed receiver includes the rental unit #201

The applicant was under the impression that the rental unit was included in the commercial tenancy and in November, 2012 gave the tenants a "Notice of Default and Demand for Payment. In January 2013 the tenant gave the landlord a copy of the Residential Tenancy Agreement with respect to the rental unit.

On January 16, 2013 the applicant served the tenants with a 10 day Notice to End Tenancy for unpaid rent by posting the Notice to the door of the rental unit. The Notice was dated January 14, 2013 and it alleged that the tenants failed to pay rent in the amount of \$15,600.00 that was due January 1, 2013.

The applicant claimed that the tenants have made only one payment of \$1,200.00 in December 2011 and, according to the applicant there are 13 months of unpaid rent in the amount of \$1,200.00 per month that is due as of the date of the Notice for a total of \$15,600.00.

The landlord's representatives requested an order for possession and a monetary order for unpaid rent.

The tenants requested that the Notice to End Tenancy be cancelled and that they be permitted to continue in possession of the rental unit. The tenants suggested that the rental unit was part of the collective premises and was governed by the commercial tenancy agreement. The tenants submitted that they have made investments in the commercial property and are entitled to compensation from the landlord pursuant the commercial tenancy. The tenants noted that he landlord has earlier made proposals to settle the dispute for a lesser amount. The tenants also contended that the market rent

for the rental unit was less than \$1,200.00 per month based on current monthly rentals. They said that they were prepared to pay a monthly market rent less than the amount stated in the residential tenancy agreement, based on current market rates. The tenants testified that they made a \$1,200.00 rent payment for the period from December 15, 2011 to January 15, 2012 and therefore the landlord's statement that there was 13 months of rent payments due as of January 1, 2013 was inaccurate.

Analysis and conclusion

I find that the tenancy of the rental unit #201 is a residential tenancy; the *Residential Tenancy Act* applies to the tenancy and that I have jurisdiction over this dispute. I was provided with a copy of the commercial tenancy with respect to units #101 and #102. The commercial tenancy agreement contemplated that there would be a residential tenancy with respect to unit #201 and this was accomplished by a separate residential tenancy agreement made in September, 2011 for a fixed term and thereafter on a month to month basis..

The tenants testified that all rental payments under the residential tenancy agreement were paid before the receiver was appointed. There is no dispute that a payment was made for the period from December 1, 2011 to January 15, 2012, but since then no payments have been made. I find that Notice was incorrect in that on January 1, 2013 there was only 12 months rent outstanding in the amount of \$14,400.00, but as of January 16, 2013 when the Notice was served rent for the period from January 15, 2013 to February 15, 2013 became due.

The tenants dispute the Notice to End Tenancy ; they claim that they are owed some amounts from the landlord pursuant to their commercial tenancy, but they have not provided evidence that would justify withholding rent under the residential tenancy and they have not proved evidence of a ground for the cancellation of the Notice to End Tenancy for unpaid rent.. I therefore deny the tenants' application to cancel the Notice to End Tenancy. There is no basis for any of the other relief sought by the tenants and their application for dispute resolution is dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord has made its own application for an order for possession and for a monetary order for unpaid rent. Pursuant to section 55 I grant the landlord an order for possession effective two days after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

The landlord did not request payment of the filing fee for its application and I make no order with respect to it. I grant the landlord a monetary order under section 67 in the amount of \$15,600.00 for unpaid rent for the period from January 15, 2012 to February 15, 2013. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: February 25, 2013

Residential Tenancy Branch

