



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bonanza Motel Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, OPB, MNR, MND, MNDC, MNSD, FF / MNDC, OLC, ERP, RP, OPT, RR

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for unpaid rent / an order of possession for breach of an agreement / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement, an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / an order of possession of the rental unit / and permission to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended, however, they frequently interrupted and spoke over one another, despite repeated requests to respond only to the Arbitrator.

Issue(s) to be Decided

Whether the dispute falls under the jurisdiction of the Act.

Whether both hearing packages have been properly served.

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on

January 5, 2013. Rent for a “2 person + mini kitchen” is \$450.00 per 2 week period. In the circumstances of this dispute rent was paid twice per month on what the tenant referred to as “welfare day.” Over time, the tenants occupied two different units.

The tenants filed their application for dispute resolution on April 9, 2013. Tenant “DP” testified that she served the landlord with the tenants’ application for dispute resolution and notice of hearing (the “hearing package”) in-person on April 11, 2013.

Subsequently, the landlord issued a 10 day notice to end tenancy dated April 13, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is April 23, 2013. The amount of rent shown on the notice as overdue on April 13, 2013 is documented as “450.00 bi-weekly.” The landlord claims that no further rent was paid after issuance of the notice, and the tenant claims that all rent due was paid.

Thereafter, the landlord filed an application for dispute resolution on April 23, 2013, the tenants vacated the complex on April 24, 2013, and the landlord served the hearing package on April 29, 2013 by posting on the tenants’ door. Tenant “DP” testified that she never received the landlord’s hearing package, and during the hearing she declined to provide the landlord with her forwarding address.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

JURISDICTION

Section 4 of the Act speaks to **What this Act does not apply to**, in part as follows:

4 This Act does not apply to

(e) living accommodation occupied as vacation or travel accommodation,...

Further, Residential Tenancy Policy Guideline # 27 addresses “Jurisdiction,” in part:

2. VACATION ACCOMMODATION

The Residential Tenancy Act provides that the Act does not apply to vacation or travel accommodation. However, the Act would apply to summer cottages and winter chalets that are rented other than on a vacation or travel basis. For example, a winter chalet rented for a fixed term of one year is not rented on a vacation basis.

Based on the limited documentary evidence and the affirmed testimony of the parties, I find that the dispute concerns a periodic tenancy which is not in any way related to either vacation or travel. In the result, I find that the Act applies to the circumstances of this dispute.

LANDLORD

As to service of documents, section 89 of the Act addresses **Special rules for certain documents**, and provides in part as follows:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one or more of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [*director's orders: delivery and service of documents*].

Further to the fact that the tenants vacated the complex on April 24, 2013, the landlord testified that the hearing package was served by way of posting on the tenants' door on April 29, 2013. I find that this manner of service does not comply with the above statutory provisions.

As well, section 59 of the Act speaks to **Starting proceedings**, and provides in part:

59(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

I find that the landlord's application was filed on April 23, 2013 and that the "notice of a dispute resolution hearing" is also dated April 23, 2013. However, it was not until six (6) days later on April 29, 2013 when the landlord posted the hearing package on the unit door.

Following from the above, the landlord's application is dismissed with leave to reapply.

TENANTS

I note that the tenants vacated the unit without providing a forwarding address after issuance of a 10 day notice to end tenancy for unpaid rent dated April 13, 2013.

In the absence of any documentary evidence whatsoever in support of their application, the tenants' application is hereby dismissed in its entirety.

Conclusion

The landlord's application is hereby dismissed with leave to reapply.

The tenants' application is hereby dismissed without leave to reapply.

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: May 07, 2013

Residential Tenancy Branch