



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed April 24, 2013: CNR; CNL; FF; O

Landlord's application filed May 1, 2013: OPR; OPL; MNR; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel two Notices to End Tenancy; to recover the cost of the filing fee from the Landlord and "other" relief.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The Landlord and the male Tenant signed into the teleconference and gave affirmed testimony.

Preliminary Matters

The rental unit is one of two sides of a duplex. During the course of the Hearing, it became apparent that the female Tenant is not a tenant at the rental unit. The female tenant lives in the other duplex. Therefore, the Landlord's application against her is **dismissed**.

The Tenant's Application for Dispute Resolution indicates that he is seeking "other" relief; however, the Tenant did not provide sufficient details in his Application with respect to what other relief he is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is **dismissed**.

Jurisdiction: Is there an agreement of Purchase and Sale between the parties?

During his testimony, the Tenant stated that in February, 2012, the parties entered into a verbal agreement that the Tenant would "rent to own" the rental unit. The Tenant testified that he paid \$4,000.00 per month to the Landlord. He stated that the parties

agreed that for a period of 3 years, \$2,000.00 of the monthly rent payments would go towards a down payment on the rental unit. He stated that the Landlord changed her mind in November, 2012.

The Landlord adamantly disputed that any such agreement existed. She stated that the Tenant paid \$4,000.00 for both sides of the duplex because the Tenant's sister rented the other side. The Landlord testified that the Tenant's sister purchased the other side of the duplex from the Landlord in November, 2012.

The Landlord stated that although rent was \$2,500.00 per side, she accepted \$2,000.00 per side because the Tenant's family and she were good friends. The Landlord stated that there was no written tenancy agreement for the other side of the duplex.

If I were to find that the Tenant had an ownership interest in the rental unit, then the Residential Tenancy Act would have no jurisdiction over this matter. If a tenant takes an interest in the rental unit which is higher than the right to possession, then the legislation does not apply.

In this case, I find that the Tenant provided insufficient evidence that there was any transfer of interest in the rental property, for the following reasons:

- There was no written Purchase/Sale agreement between the parties.
- The Landlord disputed that there was any such agreement.
- The parties entered into a tenancy agreement on February 1, 2012, and there is no addendum or clause in the agreement that a portion of rent will go towards a down payment to purchase the rental unit.

Therefore, I accept jurisdiction of this matter.

Issues to be Decided

- Is Notice to End Tenancy for Landlord's Use issued April 22, 2013, a valid notice to end the tenancy?
- Is Notice to End Tenancy for Unpaid Rent issued April 22, 2013, a valid notice to end the tenancy?
- Is the Landlord entitled to a monetary award for unpaid rent?

Background and Evidence

A copy of the tenancy agreement was provided in evidence, which was signed by the parties on February 1, 2012. It is a two year periodic tenancy, or lease, which ends

January 31, 2014. Monthly rent is \$2,500.00, due on the first day of each month. Utilities are not included in the rent.

The Landlord stated that she has sold the rental unit, and that the sale closes on July 31, 2013.

The Landlord testified that the Tenant has not paid rent from December, 2012 to April, 2013. She seeks a monetary award in the amount of \$12,500.00 for unpaid rent. The Landlord stated that the Tenant has not paid anything towards May's rent either, and asked to amend her application to include a request for loss of revenue for May, 2013.

The Tenant agreed that he has not paid any rent for the months of December to May, 2013. He stated he has not paid rent since November, 2012, because he has overpaid rent. The Tenant stated that he has paid a total amount of \$39,000.00 in rent since the beginning of the tenancy. He submitted that if I found rent was \$2,500.00 per month for the rental unit, then he still has a \$2,000.00 credit towards June rent. He submitted that if I found rent was \$2,000.00 per month, he has a credit of \$9,000.00.

Both Notices to End Tenancy were served on April 22, 2013.

Analysis

- Is Notice to End Tenancy for Landlord's Use issued April 22, 2013, a valid notice to end the tenancy?

A fixed term tenancy may be ended early by a landlord if the tenant fails to pay rent when it is due, or if the landlord has cause to end the tenancy under Section 47 of the Act. In this case, the Landlord seeks to end the tenancy under the provisions of Section 49 of the Act (for Landlord's use). Section 49(2)(c) of the Act provides that a Landlord may not end a fixed term tenancy agreement earlier than the date specified as the end of the tenancy. In this case, the end of tenancy date is January 31, 2014. Therefore, I find that the Notice to End Tenancy for Landlord's Use issued April 22, 2013, is not a valid notice and it is cancelled. **The Landlord's application for an Order of Possession based on this Notice is dismissed.**

- Is Notice to End Tenancy for Unpaid Rent issued April 22, 2013, a valid notice to end the tenancy?

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement unless the tenant has a right under this Act to deduct all or a portion of the rent. In this case, I find that the Tenant had no right under the Act to not pay rent. The

Tenant's remedy would have been to file an Application for Dispute Resolution requesting an Order of the Director that rent could be withheld. The Tenant did not file an Application seeking such an Order and therefore, I find that he breached Section 26 of the Act and that the Notice is a valid notice to end the tenancy. **I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.**

- Is the Landlord entitled to a monetary award for unpaid rent?

I find that, although it is clear that rent is owed for December, 2012, to April, 2013, the Landlord provided insufficient evidence of the amount of rent that is owed. Therefore this portion of the Landlord's application is **dismissed with leave to reapply.**

- Recovery of filing fees

Both parties have been partially successful in their applications, and I order that each party bear the cost of their own filing fees.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy for Landlord's Use is granted. The Tenant's application to cancel the Notice to End Tenancy for Unpaid Rent is dismissed.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's application for a monetary award for unpaid rent is **dismissed with 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 28, 2013

Residential Tenancy Branch