



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, DRI, OLC, LRE, OPT, LAT, O, FF

Introduction

This hearing was convened as cross applications by the landlord and the tenant.

According to the landlord's application, the landlord was seeking an Order of Possession based on a Ten Day Notice to End Tenancy for Unpaid Rent, an Order of Possession based on the tenant's breach of a material term of the tenancy and a monetary order for \$10,025.00 for rent and the tenant's failure to complete agreed-upon repairs.

According to the tenant's application, the tenant was seeking to dispute an additional rent increase, an order to force the landlord to comply with the Act or agreement, an order to suspend or set conditions on the landlord's right to access the rental unit, an order authorizing the tenant to change the locks and to obtain an Order of Possession in favour of the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony evidence that was properly served. However, I will make reference only the relevant evidence regarding the facts and issues in this decision.

Background

On February 26, 2013, the landlord had made an application for dispute resolution seeking to end the tenancy and seeking compensation for unpaid rent. The landlord's application was successful and the landlord received an Order of possession and Monetary Order against the tenant through the Direct Request Proceeding process. However, the tenant then made an application for review consideration based upon producing evidence that the Decision of February 26, 2013, was obtained by fraud.

The tenant was successful in the request for review consideration and, in a Decision dated March 12, 2013, a review hearing was ordered. The arbitrator suspended the original decision of February 26, 2013, pending the review hearing.

A review hearing was held on April 11, 2013. The result was that the landlord's order of possession for the rental unit, effective 2 days after serving, was reinstated. The decision reinstating the Order of Possession was issued on April 12, 2013 and sent to the landlord for service on the tenant.

However, the monetary order for the rental arrears, issued on February 26, 2013, in favour of the landlord, was not reinstated. The landlord's monetary claim for rent in the landlord's application was dismissed without leave to reapply.

Preliminary Matter - Landlord's Application

In regard to the landlord's application before me seeking another order of possession, I find that this matter had already been previously determined in the earlier hearings, held on February 26, 2013 and April 11, 2013. I find that the landlord had previously received a legal and enforceable Order of Possession dated February 26, 2013 that was subsequently confirmed in the decision after the review hearing held on April 11, 2013.

With respect to the landlord's monetary claim for rental arrears, I find that this matter was also dealt with in the decision resulting from the rehearing held on April 11, 2013, at which time the monetary claims of the landlord were dismissed without leave.

I find that, to consider these matters again would violate the principal of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

An arbitrator has no statutory authority to reconsider any previous findings or decisions already rendered by another arbitrator, who had heard and determined the same matter. The only avenue to challenge the outcome of a previous dispute resolution hearing would be through a judicial review by the Supreme Court of British Columbia.

For the reasons above, I find that I have no jurisdiction over the issues brought forth in the landlord's application. Accordingly I hereby decline to hear the landlord's application and the matters of dispute therein.

Preliminary Matter - Tenant's Application

With respect to the tenant's application, the tenant had indicated that they were seeking:

- to dispute an additional rent increase, under section 42 of the Act,
- to obtain an order to force the landlord to comply with the Act or agreement, under section 62(3) of the Act,
- to obtain an order to suspend or set conditions on the landlord's right to access the rental unit, and authorizing the tenant to change the locks, under section 70 of the Act, and
- to obtain an Order of Possession in favour of the tenant under section 54 of the Act.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the arbitrator determines that it is appropriate to do so, the arbitrator may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find that the portions of the tenant's application seeking an order to force the landlord to comply with the Act and an order restricting the landlord's access, pertain to issues that are unrelated to the tenant's main claim for an Order of Possession, which is based on the tenant's allegation that the tenancy had been reinstated by the parties after the Order of Possession was issued.

For this reason, I hereby sever the other issues from the main dispute which is to be determined. Accordingly, this hearing will only deal with the portion of the tenant's application related to the tenant's request for an Order of Possession under section 54 of the Act. The remainder of the issues raised in the tenant's application are therefore dismissed with leave to reapply and determined in a separate application.

Remaining Issue(s) to be Decided

Is the tenant entitled to an order of possession for the rental unit based on the terminated tenancy being reinstated by the parties?

Evidence

The tenancy relationship began in 2009 and the parties had signed back-to-back fixed term tenancies, with the most recent tenancy agreement expiring on December 31, 2012, after which the tenancy converted to month-to-month. No security deposit was paid.

The tenant acknowledged that the landlord served a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant also conceded that the landlord was successful in their application and was granted an Order of Possession against the tenant, that was confirmed as valid and enforceable by the Arbitrator in the re-hearing decision dated April 12, 2013.

The tenant further agreed that the landlord served this Order of Possession on the tenant.

However, the tenant's position is that by June 17, 2013, when the landlord finally served her with the Order of Possession the Order had been compromised by the fact that the tenancy was reinstated.

The tenant testified that this Order was served on the tenant after a significant delay of two months, during which the landlord had willingly accepted monthly rental payments from the tenant for the months of May 2013 and June 2013, and the landlord had apparently done so without any stated conditions. The tenant testified that the landlord failed to specifically make it clear that the payments were being accepted "for use and occupancy only". The tenant testified that that, in fact, the landlord had even communicated an intent to continue the tenancy. At the same time, the landlord also appeared to be negotiating that the parties enter into a new revised tenancy agreement.

The tenant made reference to copies of email communications in evidence which supported the tenant's testimony.

Analysis

Based on the evidence, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. I further find that the landlord was awarded a valid and enforceable Order of Possession ending the tenancy, which was served on the tenant on June 17, 2013. I find that, under normal circumstances, this would permanently end the tenancy, and entitle the landlord to vacant possession of the rental unit.

However, I find that, when the landlord subsequently accepted payment of the rent for the months of April 2013 and May 2013, the landlord neglected to ensure that the tenant was aware that these funds were merely being accepted for "use and occupancy only", by giving the tenant a receipt that made this fact clear.

I also accept the tenant's testimony and evidence verifying that the landlord's communications with the tenant, appeared to imply that the tenancy would either continue under certain conditions, or that the parties may possibly enter into a completely new agreement.

I find that, under the Act, the landlord has an obligation to make the tenant understand that acceptance of rental arrears or funds owed to the landlord after issuing a Notice to End Tenancy, are not intended to reinstate the tenancy and that the landlord would still be proceeding with the termination of the tenancy, despite the acceptance of payment for the rent or rental arrears.

I find that this landlord accepted after the hearing decision of April 12, 2013.

Given the above, I find that the tenancy between this landlord and this tenant was inadvertently reinstated by the landlord. Therefore I find that the tenant is entitled to be granted an Order of Possession.

I hereby grant the tenant an Order of Possession effective immediately on service to the landlord. This order must be served on the landlord.

I hereby dismiss the remainder of the tenant's applications with leave to reapply.

I hereby decline to hear the landlord's application as the matters under dispute were already heard and determined by another arbitrator at a previous hearing held on April 11, 2013.

Conclusion

The tenant is partly successful in the application and is granted an order of possession of the rental unit. The remainder of the issues in tenant's application are severed and dismissed with leave. I declined to hear the landlord's application as the matters were previously heard and determined.

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: July 23, 2013

Residential Tenancy Branch

