



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JHJ PROPERTY SOLUTIONS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR OPC OPB MND MNR MNSD FF
MT CNR MNSD

Preliminary Issues

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

Upon review of both applications before me I have determined that I will not deal with all the dispute issues placed on those applications. For disputes to be combined on an application they must be related. Not all the claims on these applications are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Landlord's requests for Orders of Possession and his Monetary Order request for unpaid rent, and the Tenant's request for more time to make his application and to set aside, or cancel the Landlord's Notice to End Tenancy issued for unpaid rent or utilities; and I dismiss the balance of each claim with leave to re-apply.

During the course of this proceeding I heard testimony about three separate tenancies. The first tenancy agreement began on July 24, 2012 and listed L.J. and B.S. as tenants. L.J. moved out sometime in January 2013 and B.S. entered into a new written tenancy agreement that began on January 18, 2013. The Landlord was advised that B.S. vacated the property in July 2013 and L.J. had moved back in. the Landlord began collecting rent from L.J. but did not sign a new written tenancy agreement.

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Based on the above I find that at the time the Landlord began collecting rent from L.J. in August 2013, they entered into a new verbal tenancy agreement for the monthly rent of \$1,600.00 due on the first of each month. Therefore, I find that B.S. is not a party to this dispute as her tenancy ended when she vacated the unit and when L.J. began paying rent. Accordingly, the style of cause has been amended to remove B.S.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on December 10, 2013, to obtain Orders of Possession for: unpaid rent or utilities; for cause; and because the Tenant had breached an agreement. The Landlord has also applied for a Monetary Order for: unpaid rent or utilities and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on December 9, 2013, seeking more time to make his application and to set aside, or cancel the Landlord's Notice to End Tenancy issued for unpaid rent or utilities.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The Tenant submitted evidence that indicated the parties had discussed a "rent to own" agreement. The undisputed testimony was that the parties had not entered into a written rent to own agreement and that their relationship was that of landlord and tenant. Accordingly, I found that this matter fell under the jurisdiction of the *Residential Tenancy Act* and I proceeded with the hearing.

Issue(s) to be Decided

1. Has the Tenant vacated the rental unit and returned possession to the Landlord?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

As noted above, I have found that these parties entered into a verbal month to month tenancy that began in August 2013. Rent is payable on the first of each month in the amount of \$1,600.00 and the security deposit of \$800.00 and pet deposit of \$800.00 that were paid in 2012 have been carried forward to this tenancy agreement.

During the course of this proceeding the Tenant testified that he has vacated the rental unit and has attended the unit on January 28th or 29, 2014 to finish the final clean up. A discussion took place during which the parties agreed to attend the rental unit on January 30, 2014 at 2:00 p.m. to complete the move out inspection and sign the condition inspection report form.

The Landlord testified that when no rent was paid for December 2013 he served the Tenant the 10 Day Notice on December 3, 2013. No rent has been paid for December 2013 or January 2014; therefore, he is seeking monetary compensation in the amount of \$3,200.00 (2 x \$1,600.00).

The Tenant confirmed that he had not paid rent and argued that he withheld the rent payments because the Landlord owes him money for work he had done.

Analysis

The Tenant has vacated the property and the parties have agreed to meet at the unit at 2:00 p.m. January 30, 2014, for the move out inspection. Accordingly I find the Landlord may regain possession as of 2:00 p.m. and therefore, no Orders of Possession are required.

Based on the above, the Tenant's application to dismiss the Notice is no longer relevant; therefore, it is hereby dismissed.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement, regardless of any disputes the tenant may have with the landlord.

Based on the above, I find the Tenant breached section 26 of the Act by not paying his rent. The Tenant remained in possession of the unit until January 30, 2014; therefore, I award the Landlord unpaid rent for December 2013 plus use and occupancy for the entire month of January 2014 in the amount of **\$3,200.00** (2 x \$1,600.00).

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Tenant's application to dismiss the notice, without leave to reapply.

As noted above, the Tenant is at liberty to file another application if he wishes to proceed with a claim for compensation from the Landlord.

The Landlord has been awarded a Monetary Order in the amount of **\$3,250.00** (\$3,200.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: January 31, 2014

Residential Tenancy Branch

