



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: DRI, CNR
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and to dispute an additional rent increase.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee.

At the outset of the hearing, neither party raised any issue regarding the service of the other’s application and evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Is the tenant entitled to an order cancelling the Notice and is the alleged rent increase valid?

Background and Evidence

The undisputed evidence is that this tenancy began on March 1, 2012, for a monthly rent at the beginning of the tenancy in the amount of \$550. The landlord produced a copy of the written tenancy agreement showing this amount of monthly rent and the start date of the tenancy, with the tenant and the landlord's agent, the witness listed above, SM, signing the document on February 28, 2012.

The tenant produced two separate tenancy agreements, one showing that the tenancy began on March 1, 2012, for a monthly rent of \$550, and signed by the tenant and SM on March 1, 2012. The second tenancy agreement produced by the tenant shows a tenancy starting on March 1, 2012, for a monthly rent of \$400, signed by the tenant and SM on March 1, 2012.

The landlord resides in another city apart from the rental unit, which is one of a multi unit building.

I heard undisputed evidence that SM was the property manager for the residential property in question at the time the tenancy began.

There was evidence that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), the subject of this dispute resolution on February 9, 2014, by leaving it with the tenant, listing unpaid rent of \$170 as of February 1, 2014, and an effective end of tenancy date of February 15, 2014. The tenant filed in dispute of the Notice on February 12, 2014.

The landlord submitted a copy of a notice of rent increase to the tenant, which was dated September 24, 2013, notifying the tenant that rent was to be increased from \$550 to \$570 beginning January 1, 2014.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support of her 10 Day Notice to End Tenancy.

The landlord submitted that the only written tenancy agreement of which she was aware was the one in her possession and a copy of which she produced, as referenced above. The landlord denied receiving a copy of the 2 tenancy agreements produced by the tenant until receiving them in the tenant's evidence package.

The landlord did not dispute that she allowed a rent reduction of \$150 per month, beginning in March 2013, as the tenant began performing management duties in the residential property at that time and in due to SM leaving her management duties, and that she collected the amount of \$400.21 from the tenant from that month until January 2014.

The landlord submitted that in mid January 2014, the tenant ceased working for her, for various reasons, and therefore, his monthly rent due in February 2014, was to be \$570, as per the original agreement and the rent increase notice. Instead the tenant paid only \$400, leaving a deficiency of \$170, as listed on the Notice.

The landlord submitted that additionally, in March and April 2014, the tenant owed \$570 each, and paid only \$400 each, leaving a total rent deficiency for those months of \$170 each. The landlord, I must note, amended her original application to include unpaid rent through April 2014.

In response, the tenant submitted that he began working for the landlord on April 1, 2012 and that the parties' agreement was that his monthly rent would be \$400.21 in lieu of services performed.

The tenant contended that when he received the notice of rent increase, he was told to ignore it; the tenant stated that again in January 2014, when the rent increase was to start, he was again told to ignore it.

The tenant submitted that he was informed that his rent was to stay at \$400, but that the original amount listed for monthly rent, \$550, was just a "formality for the books."

In response, the landlord submitted that the tenant paid \$550.21 throughout 2012, and that he only began working for her in 2013.

The landlord submitted that as the rent was returned to the original rent, along with the rent increase, and due to the tenant not working for her anymore, the tenant owed \$570, beginning February 2014.

At this point in the hearing, I telephoned SM, who was listed by the tenant as available to testify and was successful in connecting with SM.

In response to my question, SM said that the arrangement for the tenant to begin working for the landlord was in 2013, as she, SM, stayed employed by the landlord until that time.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five

days. In this case, I find that the tenant disputed the Notice within business five days; however when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the evidence shows that the parties entered into a verbal agreement, not contemplated or mentioned in the written tenancy agreement signed February 28, 2012, that, beginning in March or April 2013, the tenant's monthly rent was reduced to \$400 while the tenant was employed by the landlord.

I also find there is no dispute that the tenant ceased working for the landlord in January 2014.

Although the tenant produced 2 separate tenancy agreements, I found that I could not rely on those documents due to their inconsistency. For instance, the landlord had a copy of an agreement, signed by SM and the tenant, showing the same start date and monthly rent as one of the documents produced by the tenant, but signed on another date, February 28, 2012.

The tenant produced copies of two separate tenancy agreements, both allegedly signed on March 1, 2012, by the tenant and SM, for the same start date of March 1, 2012, one showing monthly rent of \$400 and the other showing monthly rent of \$550, without further explanation as to why there would be a reduction in rent beginning on the same day.

Additionally SM, the tenant's own witness, contradicted the statements of the tenant when he alleged that he began working for the landlord in April 2012.

I therefore find that the tenancy agreement produced by the landlord to be the only true tenancy agreement regarding this tenancy.

I next considered that the parties' working arrangement altered the terms of the monthly rent agreement, in verbal form, and that the monthly rent was reduced to \$400 per month while the tenant remained employed by the landlord. As such, I find that the tenant's monthly rent was to return to the original amount when the employment of the tenant ceased, as per the terms of the written agreement. As the tenant's employment ceased in January 2014, I find the tenant's monthly rent was restored to the terms of the original agreement in February 2014, and that he failed to pay the original amount.

Although the tenant alleged that he was informed that the rent was to remain at \$400, I find this argument lacks merit, as the reason his monthly rent was reduced as stated in the written agreement was for employment reasons. I also find that this statement was disputed by the landlord and without further proof, I find disputed testimony does not sufficiently prove the allegations.

As to the amount of monthly rent owed by the tenant, the landlord issued to the tenant a notice of rent increase on September 24, 2013; however this notice of rent increase was

issued to the tenant while his rent was, by verbal agreement, \$400 per month, not \$550 as listed in the rent increase notice. I therefore have disallowed the rent increase and as such, I find the tenant's monthly rent beginning February 2014, the month following the end of his employment, was \$550; instead the tenant paid \$400 for February, March and April, each, which I find leaves a rent deficiency of \$150 per month for those three months, for a total of \$450.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

As noted above, I find the tenant owes the amount of \$450 for unpaid rent through April 2014.

I therefore find that the landlord is entitled to a monetary award in the amount of \$500, comprised of outstanding rent of \$450 through April 2014, and the \$50 filing fee paid by the landlord for this application.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Although I made a determination that the rent increase sought to be imposed by the landlord was not valid, I have not made a determination that the monthly rent is reduced to \$550, as the tenancy is ending as noted above.

Conclusion

The landlord's application has been largely successful.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also grant the landlord a final, legally binding monetary order, pursuant to section 67 of the Act, for the amount of her monetary award, \$500, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The tenant's application is 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: April 7, 2014

Residential Tenancy Branch

