



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, SS, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested compensation for unpaid rent, compensation for damage or loss under the Act, a substitute service Order and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

S.P. was called into the hearing and affirmed. He testified that on January 11, 2014 he personally served the tenant the hearing documents. Service occurred in the temple, at 11:30 a.m. S.P. said that a number of people were present to witness the service.

R.P. provided affirmed testimony that he had prepared the paperwork for S.P. to serve to the tenant and had provided him with the papers on the morning of January 11, 2014. The envelope also contained the landlord's evidence submission. R.P. said more than 200 people were present in the hall when S.P. handed the tenant the hearing documents.

A.T. provided affirmed testimony that he was present in the temple when the tenant was given the papers on January 11, 2014 and that he then saw the tenant leave the temple.

The tenant's agent said that the tenant had not been served with Notice of the hearing and that he became aware of the hearing as the agent had seen documents posted at the temple. The agent did not indicate how or when he would have told the tenant about the hearing. The landlord denied that any papers related to the hearing had been posted.

From the testimony provided I determined, on the balance of probabilities, that the tenant has been personally served the hearing documents and evidence, in accordance with section 89 and 90 of the Act; effective January 11, 2014.

An Order for substitute service was not required.

Preliminary Matters

At the start of the hearing S.N. entered the conference call as agent for the tenant. S.N. provided affirmed testimony that 4 days ago the tenant contacted him by facsimile, requesting S.N. attend the hearing as agent.

The agent stated that he was calling from outside of the country and as a result of medical issues was unable to return to Canada to prepare for the hearing. The agent confirmed that the tenant did not supply him with any documentation for the hearing.

The agent requested an adjournment based on the tenant's need for an interpreter, the agents inability to prepare for the hearing and the absence of service of the hearing documents by the landlord. The agent requested that the hearing be convened to a face-to-face hearing. The agent submitted that the matter is before the Supreme Court.

I heard from the landlord in relation to the adjournment request. The landlord stated that they have taken all appropriate steps to serve the tenant with Notice of the hearing and they were prepared to proceed. The landlord objected to the request for adjournment and said the matter was not linked to any Supreme Court proceeding.

I considered the Residential Tenancy Rules of Procedure and the authority of an arbitrator when a request for adjournment is made. There was no evidence before me that an adjournment would lead to a resolution of the matter. I determined that the tenant had been given ample opportunity to prepare for the hearing, to arrange an agent and interpreter and to make a request for a face-to-face hearing well in advance of the hearing. Even if the tenant had made a request for a face-to-face hearing, there was no evidence before me that would support a need for a face-to-face hearing. Interpretation can be efficiently and fairly provided during conference call hearings.

The tenant did not contact his agent until 4 days prior to the hearing; a delay that formed what I find was neglect on the part of the tenant. I determined that there would be no prejudice to the tenant as he presented no compelling evidence of the need for adjournment. I find, on the balance of probabilities, the request to adjourn was simply an attempt to delay the hearing.

There was no evidence before me that this matter was linked substantially to a matter before the Supreme Court.

When I provided my reasons for proceeding with the hearing the tenant's agent became very vocal. He proceeded to speak over me and refused to cease talking, despite repeated requests to do so. The agent was provided multiple warnings that he must cease speaking so that the hearing could proceed and was warned he would be removed from the hearing if he failed to comply. The agent continued to yell and refused to cease speaking. I then applied section 8.7 of the Rules of procedure which provides:

Interruptions and inappropriate behaviour at the dispute resolution proceeding

Disrupting the other party's presentation with questions or comments will not be permitted. The arbitrator may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution proceeding and the arbitrator may proceed with the dispute resolution proceeding in the absence of the excluded party.

As the agent refused to allow me to speak and would not comply with instructions to cease his inappropriate behaviour he was excluded from the conference call hearing and the hearing proceeded.

The landlord has claimed the cost of legal fees. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this legal fee portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to the cost of bailiff services?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced as part of an employment contract and ended as the result of a 10 day Notice to end tenancy issued by the landlord in July 2013.

The landlord supplied a copy of a previous decision (file 250135 and 250037) issued on August 22, 2013. The decision resulted in the landlord receiving an Order of possession and monetary Order for rent owed to August 2013. Rent was determined to be \$1,030.00 per month.

The landlord provided a copy of a Writ of Possession issued in the Supreme Court of British Columbia on September 19, 2013.

A copy of the bailiff service invoice dated January 8, 2014 was supplied as evidence. On September 27, 2013 the bailiff removed the tenant from the rental unit. The tenant

was then, almost immediately, allowed to return to the unit as the tenant applied requesting judicial review of the decision issued, authorizing the eviction. The landlord paid \$792.99 for the bailiff service.

The landlord submitted copies of emails sent between legal counsel for the tenant and the landlord's legal counsel. On December 10, 2013 the tenant's legal counsel sent an email indicating the tenant would vacate the unit by December 12, 2013 and that a Notice of Discontinuance had been filed and would be sent to the landlord's counsel.

The landlord's counsel responded that since the discontinuance had been filed the tenant would need to leave the rental unit on that date. The tenant did vacate on December 10, 2013 and the landlord obtained possession. The judicial review did not proceed.

The landlord has claimed the loss of rent owed from September to December 2013, inclusive, in the sum of \$4,120.00. The landlord was not able to advertise for a new priest, who would live in the rental unit, as the landlord did not know when the tenant would vacate. The housing is used by temple priests. Once the tenant vacated the landlord was able to move forward with their attempts to hire a new priest, who took possession of the rental unit several months ago.

Analysis

In the absence of evidence to the contrary, I find that the tenant has not paid rent from September to December 10, 2013, inclusive. Section 57(3) of the Act provides:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended

Therefore, pursuant to section 65 of the Act, I find, from the evidence before me, that the landlord is entitled to unpaid rent from September to November 2013 in the sum of \$3,090.00.

I have pro-rated rent owed as \$33.86 per day for December, 2013 and find, from the evidence before me, that the landlord is entitled to compensation for unpaid rent from December 1 to 10, 2013 in the sum of \$330.86.

The balance of claim for unpaid December 2013 rent is dismissed, pursuant to section 57(3) of the Act. The landlord is not entitled to compensation for unpaid rent beyond the last day a tenant overholds.

I find that the tenant failed to pay rent owed, resulting in an Order of possession and the eventual need for bailiff services. As a result of the tenant's breach of the Act, I find that the landlord is entitled to compensation for bailiff services, in accordance with section 65 of the Act, in the sum of \$792.99. The tenant chose to request judicial review and was allowed to return to the rental unit, but failed to pursue that review. If the tenant

had vacated on the effective date of the 10 day Notice to end tenancy the costs claimed by the landlord would not have been incurred.

As the application has merit I find that the landlord is entitled to the \$100.00 filing fee that was paid.

Therefore, the landlord has established a monetary claim, in the amount of \$4,313.85, which is comprised of unpaid rent, bailiff fees and the \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$4,313.85. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord is entitled to a monetary Order for unpaid rent from September, 2013 to December 10, 2013, bailiff fees and filing fee costs.

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 24, 2014

Residential Tenancy Branch