



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cedar Village Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlords: OPR, MNR, FF
Tenant: CNR, OLC, RR, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy; an order to reduce rent; and other.

The hearing was conducted via teleconference and was attended by the landlords and the tenant.

Section 59(2)(b) of the *Act* requires that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. This requirement is to ensure, in the interest of natural justice, that the responding party has an opportunity to understand the claim against them in order to prepare for the hearing.

At the outset of the hearing the tenant indicated that when he submitted his Application for Dispute Resolution he had checked of “other” to capture the fact he wanted compensation from the landlord for harassment. The Application did not indicate how much compensation he was seeking.

As the tenant did not disclose, fully, what he was seeking and why I find it would be unfair to the landlord to proceed on the issue of compensation for harassment. Therefore, I amend the tenant’s Application to exclude this matter. The tenant remains at liberty to file a new and separate Application for Dispute Resolution seeking compensation.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenant has applied to cancel a notice to end tenancy and the landlord has applied for an order of possession related to that notice to end tenancy I find the primary issue before me is whether or not the tenancy will continue.

As the tenant’s Application included seeking an order to have the landlords comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and an order to

have the landlord reduce rent for services agreed upon but not provided I find that these issues are unrelated to the issue of non-payment of rent.

As such, I dismiss the portion of the tenant's Application seeking orders to have the landlord comply with the *Act*, regulation or tenancy agreement and for a rent reduction, with leave to reapply at a future date.

In the tenant's Application for Dispute Resolution he had provided the dispute address as his address for service that includes being served by mail. He also had indicated that he had a separate mailing address which he provided on a separate Schedule of Parties.

The landlord testified that she had served the tenant at the address provided on the Application. However, the parties acknowledge that there is no specific postal mailing address specifically assigned to the residential property, as such, any mail would not be delivered if it was addressed to that address.

The tenant submits he did not receive the landlord's Application or evidence. While normally based on the above I would dismiss the landlord's Application with leave to reapply based on failure to serve documents, I find that because the tenant had submitted his own Application to dispute the Notice and the issue of how much rent may be owed to the landlord the tenant would be prepared to address this issues.

As such, I allowed the landlord's Application but excluded any documentary evidence submitted in support of their Application. I advised the landlord they could testify to any of the evidence they had submitted, but that I would not be referring to any of the documentary evidence they had provided.

In addition, Residential Tenancy Branch Rule of Procedure 11.8 allows parties to submit digital evidence that includes photographs, audio recordings, video recordings or other material provided in an electronic form that cannot be readily reproduced on paper. The Rule goes on to state that the digital evidence must be accompanied by a written description and meet the service Rules and deadlines.

The tenant submitted evidence in the form of a DVD and USB stick but provided no description of the contents. I advised the tenant at the start of the hearing that I would not be considering any of his evidence submitted by electronic medium.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The parties agree the tenancy began on July 25, 2013 as a month to month tenancy for the monthly rent of \$600.00 due on the 1st of each month with no security deposit issued. No written tenancy agreement was created.

The parties also agreed that the tenant was also doing work for the landlord both on the property and at other locations and that they had an informal agreement that the tenant could deduct his labour and expenses from his rent for work completed.

The landlord submits that the tenant had not completed any work for him since the fall and that they were all got up with any obligations for reimbursement submitted by the tenant.

The landlord submits that for the month of April 2014 the tenant paid the landlord \$100.00; for the month of May 2014 he paid the landlord \$116.79; and for June 2014 he paid \$475.00. The landlord submits that he has not cashed any of these noted cheques. The tenant submits that he still has money in his account to accommodate these payments.

The tenant submits that when it was clear the landlord was not going to provide the services that the tenant was requesting such as mail, internet, cable services the tenant decided that he would charge the landlord for work that he had completed during the fall and winter.

The tenant submits that he originally did not charge the landlord with these charges because he thought he was helping the landlord more as friend but when it was clear the landlord saw this as a different relationship he felt he should be reimbursed for these works. He further charged the landlord for additional work for the month of April which he applied to deduct from May 2014 rent and charges for May to deduct from June 2014 rent.

The parties agree the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 6, 2014 with an effective vacancy date of May 16, 2014 due to unpaid rent in the amount of \$600.00.

Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Further, the issue of any remuneration a tenant receives for work that they may perform for a landlord is considered contracting outside of the obligations that the parties have in relation to the tenancy. However, I recognize that for functional purposes that parties may enter into agreements that allow a tenant to deduct certain things from rental payments.

I find that the circumstances in this case are just that. As such, I make no findings of fact or law related to the landlord's obligations to reimburse the tenant with any remuneration for work completed or supplies purchased by the tenant.

Rather I find it necessary to look at whether or not the tenant met his obligations for the payment of rent under the tenancy agreement. Based on the testimony of both parties and the tenant's documentary evidence I find the tenant has failed to meet his obligations under Section 26 to pay rent when it was due.

I also find that the tenant withhold a portion of his rent, at least in part, as retaliation because he believed that the landlord was not fulfilling obligations to provide services that he had requested. From the tenant's own testimony he deducted the amounts for work he said he completed during periods that he had already been compensated for as a result of his frustration with the landlord over the services he felt he should have been receiving.

As such, I find the tenant had no authority under the *Act*, regulation or verbal tenancy agreement to withhold these funds.

I find that the tenant has been served with notice to end tenancy as declared by the landlord. The notice was received by the tenant on May 6, 2014 and the effective date of the notice was May 16, 2014. As I have found the tenant had no authority to withhold any amount of rent I find the Notice to be effective.

As to the amount owed to the landlord for the period of April, May and June I find the tenant owed the landlord \$1,800.00 for rent and has provided the landlord with cheques totalling \$691.79. As the landlord has not cashed these cheques and because I cannot confirm if they will clear, I find the landlord is entitled to \$1,800.00 for rent.

However, I order that this amount be reduced for each of the three cheques (\$100.00; \$116.79; \$475.00) that the landlord already has from the tenant as long as they each can be successfully negotiated by the landlord.

I note that should the tenant feel that he is entitled to compensation for work that he has completed for the landlord as part of his role as an employee he remains at liberty to pursue those funds through a court of competent jurisdiction.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,850.00** comprised of \$1,800.00 rent owed (subject to the above) and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 30, 2014

Residential Tenancy Branch

