



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, O, FF, MT, CNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated November 4, 2014 ("10 Day Notice"), pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice, pursuant to section 46.

The landlord and tenant's agent ("tenant"), attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The tenant's agent confirmed that she represented the tenant, FF, and had full authority to speak to this matter and settle this matter on his behalf. The tenant enclosed a letter, dated November 7, 2014, regarding this agency, with his application.

The landlord testified that his agent, LP, served the tenant personally at his rental unit, with the landlord's application for dispute resolution on November 4, 2014. The tenant's agent confirmed that the tenant received the application in that method and on that date. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was served with the landlord's application on November 4, 2014.

The tenant's agent testified that the landlord was served personally with the tenant's application for dispute resolution by the tenant's agent and brother, JF, on November 8, 2014. The landlord confirmed that he received the application in that method and on that date. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenant's application on November 4, 2014.

The landlord testified that the tenant was served personally with a 10 Day Notice on November 4, 2014, stating an effective move-out date of November 18, 2014. The tenant's agent acknowledged receipt on behalf of the tenant on November 4, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on November 4, 2014.

Preliminary Issues

The landlord confirmed that he did not wish to amend his application to include the name of the other tenant on the 10 Day Notice, CF. He confirmed that he wished to proceed with the hearing and any orders, as only against the one tenant, FF.

During the hearing, the landlord amended his application to include his correct mailing address to add "Road."

The tenant's agent testified that the tenant's application for dispute resolution was filed with the Residential Tenancy Branch on November 6, 2014. As such, the tenant applied for dispute resolution within five days of receiving the 10 Day Notice on November 4, 2014, as required by section 46(4). Therefore, there is no need for me to consider the tenant's application for more time to make an application to cancel the 10 Day Notice.

At the outset of the hearing, the landlord confirmed that he was not seeking any "other" relief, as originally noted in his application. Therefore, the claim for "other" relief is withdrawn.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on September 1, 2013 and continues to the present date. The tenant is his son, who occupies the rental unit with his wife and daughter. The landlord testified that this is a month-to-month tenancy with rent payable monthly in the amount of \$1,200.00 due on the first day of each month. The landlord stated that no security deposit was required from the tenant because of their family relationship. There is no written tenancy agreement, as this was an oral agreement made sometime in August 2013, as per the landlord's evidence. No terms of this tenancy arrangement, including rent, have been conveyed in writing, to date.

The landlord testified that the initial agreement was for the tenant to occupy the rental unit for six to eight months without paying rent, as he was performing landscaping work in lieu of rent, during that time. The landlord stated that the work was completed well and amounted to approximately \$12,000.00 in value, which he would have had to pay if he were to have hired an outside contractor. He states that the issue regarding the tenant paying rent would be revisited after six to eight months after the tenancy began.

The landlord approached the tenant sometime in early September 2014, although he could not recall the exact date, after the tenant had been living at the rental unit for one year rent-free, to ask for rent in the amount of \$1,200.00. He states that the tenant paid him \$300.00 cash, for which he did not provide a receipt, because the tenant did not ask for one. The landlord states that the tenant did not have any more cash to pay for rent and he was advised by the tenant that he would have to ask the tenant for rent each month, if he required it.

The landlord testified that rent in the amount of \$900.00 is still outstanding for September 2014, as the tenant made a \$300.00 payment towards the total \$1,200.00 owing for September 2014. He states that rent in the amount of \$1,200.00 for each of October and November 2014, are still unpaid and no payments have been made by the tenant since the \$300.00 in September 2014. The landlord confirmed that the total amount of \$3,300.00 is owed for September, October and November 2014 unpaid rent. The landlord's 10 Day Notice indicates that \$3,300.00 was owing as of November 1, 2014, for September to November 2014 rent. The landlord testified that he did not keep a rent ledger and assumed that the tenant would pay rent. The landlord testified that he has not been prevented from accessing the rental unit at any time during this tenancy, but has avoided entering the rental unit since November 4, 2014, due to another unrelated issue. The landlord states that he would like to rent out the property, but cannot do so while the tenant is occupying the rental unit.

The tenant's agent testified that no tenancy agreement exists in this matter. She stated that there was no formal agreement, whether written or verbal, regarding this rental unit. The tenant's agent stated that the arrangement between the landlord father and his tenant son, was for the tenant to perform landscaping to clean up the property, thereby increasing its value, and for it to be sold at a later date. She stated that there was no deadline to complete this work and that the tenant and landlord had agreed that the tenant would occupy the rental unit, rent-free, until it was sold to a buyer. The tenant's agent testified that this relationship was one of convenience and there was never any mention of rent owing to the landlord, nor was there any agreement for rent to be paid for this rental unit. She testified that while the tenant was aware that the rental unit had previously been rented to other tenants for \$1,200.00, that there was no such agreement between this tenant and landlord for rent for \$1,200.00. She maintained that the rental unit property was listed for sale for a short period of time and then removed from the market listing, for an unknown reason. She testified that the use of the property may have now changed, given that the landlord is now intending to rent, rather than sell, the property.

The tenant's agent further testified that the \$300.00 payment made by the tenant to the landlord in September 2014, was not for rent, but rather was for another business matter. She stated that the tenant and landlord had other business matters involving dairy farming, excavation and landscaping, for which they would regularly exchange money.

The tenant's agent expressed the tenant's and his family's willingness to vacate the rental unit, as outlined in the tenant's letter, dated November 7, 2014, and enclosed with his application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The tenant's agent confirmed that she had authority to settle this matter on behalf of the tenant and had been given specific instructions on a settlement, particularly regarding the vacancy date, as outlined below.

The landlord and tenant agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on January 15, 2015, by which time the tenant, his wife and daughter, will have vacated the rental unit.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. I specifically confirmed with the landlord, verbally, during the hearing, that the above agreement settled all his claims for an order of possession for unpaid rent, a monetary order for unpaid rent and to recover the filing fee for this application from the tenant.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and anyone on the premises fail to vacate the rental premises by 1:00 p.m. on January 15, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and anyone on the premises fail to vacate the rental premises by 1:00 p.m. on January 15, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for "other" relief, is withdrawn.

I have not considered the tenant's application for more time to make an application to cancel the landlord's 10 Day Notice as this issue is moot.

The tenant's application to cancel the landlord's 10 Day Notice is allowed. The 10 Day Notice is hereby cancelled and of no force and effect.

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: November 27, 2014

Residential Tenancy Branch

