



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0588848 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR

For the landlord – OPR, OPB, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application. The landlord withdraws their application for an Order of Possession because the tenant breached an agreement with the landlord.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy for unpaid rent?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy originally started on May 01, 2014 for a fixed term which was due to end on April 30, 2015. The first month's rent for May was waived. The rent was agreed at \$800.00 a month which included water and cable. The tenant testified that the landlord and tenant entered into a new tenancy agreement which started on June 01, 2014 for a month to month tenancy at a monthly rent of \$400.00 which included water but not cable. A security deposit of \$400.00 was paid on April 29, 2014. The landlord has provided copies of both tenancy agreements in documentary evidence; the tenant has provided a copy of the second tenancy agreement in documentary evidence.

The landlord testified that the second tenancy agreement was only drawn up and signed by the parties as the tenant needed this to show to a church group who were going to pay rent for the tenant of \$400.00 a month for June. This was not intended to be a new tenancy agreement but solely for the purpose of the tenant getting the church group to pay the rent for June only.

The landlord testified that after June the tenant was supposed to start paying \$800.00 a month again. The tenant paid \$400.00 in June but failed to pay the balance of rent for of \$400.00. The tenant paid \$400.00 in July and failed to pay the balance of \$400.00. No rent has been received for August, September, October or November of \$3,200.00. On September 02, 2014 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent of \$2,000.00 by posting the Notice to the tenant's door. The amount owed was actually for \$2,400.00; however, the landlord had deducted the \$400.00 for the security deposit from their calculation. The landlord testified that the Notice had an effective date of September 25, 2014.

The landlord testified that the tenant did not pay any rent since the 10 Day Notice was served upon him and although the tenant did offer to make some rent payments none were made. The landlord seeks a Monetary Order for the unpaid rent which is now \$4,000.00 and seeks an Order of Possession effective as soon as possible.

The tenant disputed the landlord's claims. The tenant testified that he needed the second tenancy agreement to prove to the church group that his rent was \$400.00 a month and the landlord gave the tenant the new tenancy agreement to sign. The tenant testified that he had agreed that he would start to pay rent of \$800.00 after his surgery was completed and the tenant had returned to work. The tenant testified that the surgery was completed on October 21, 2014 and the tenant needs six to eight weeks to recuperate before returning to work. The tenant

testified that he did offer to pay the landlord \$800.00 on August 31 for Septembers rent and again on September 02, and September 17 or 18. The landlord and the landlord's agent refused to accept the rent and informed the tenant that they just wanted him to move out. The tenant testified that he had shown RM that he had cash of \$400.00 and a cheque of \$400.00 from the church. The tenant testified that he has three cheques from the church each for \$400.00 which the landlord will not accept. The tenant disputed the amounts the landlord has stated is owed as the rent was agreed at \$400.00 a month. The tenant testified that he has a rent receipt from the landlord's agent dated May 30, June 01, July 01 and August 01 each for \$400.00. However, now the landlord is saying that nothing had been paid for August.

In the landlords written submissions sent as additional evidence the landlord mentions amounts owed for cable and utilities if the second tenancy agreement is shown to be the current agreement

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have considered the evidence and testimony before me and find there are some discrepancies between the landlords' evidence and the evidence of the tenant. I will deal first with the matter of the second tenancy agreement. A written tenancy agreement signed by both parties is a legal and enforceable agreement which notifies both parties of the terms of the tenancy agreement. A tenancy agreement can only be altered with the consent of both parties. I find both parties have signed this new tenancy agreement and therefore it is this agreement which takes precedence over the original agreement. This second tenancy agreement states that rent is \$400.00 a month due on the first of each month, for a month to month tenancy. It does not state that this is for the month of June only or that it is for a period until the tenant returns to work. I therefore find this agreement is valid and binding for each party and the rent for this unit is therefore \$400.00 a month from June 01, 2014.

In light of this I have considered the evidence before me concerning the rent arrears. The landlord has stated that the tenant owes rent of \$4,000.00. I conclude from the evidence provided in the form of the second tenancy agreement that between June 01, and September 01, 2014 there was rent due of \$1,600.00. The tenant paid \$1,600.00 as shown on the receipts provided in evidence. \$400.00 was paid on May 30, May 31, June 26 and July 23, 2014. The tenant testified that he did attempt to pay \$800.00 as per the verbal agreement he had with the landlord. While any verbal agreement is difficult for a third party to determine as it is the tenant that is testifying that he agreed to start paying \$800.00 per month when he returned to work after his surgery then I must conclude that this verbal agreement was in place and strongly recommend that the parties put this agreement in writing. However, currently the second tenancy agreement is valid and consequently I am satisfied from the evidence before me that when the 10 Day Notice to End Tenancy was issued there was no rent outstanding and therefore the 10 Day Notice is considered to be null in void.

with regard to the landlord's claim for a Monetary Order for unpaid rent; the landlord has insufficient evidence to show that rent was \$800.00 per month and therefore I am not satisfied that there are any rent arrears up to September, 01, 2014. The tenant has testified that he attempted to pay rent in September and October which the landlord refused to accept. The landlord testified that the tenant only offered to pay but did not actually attempt to make a payment of rent. However, the landlord is required to serve the tenant in a manner indicated under s. 89 of the *Act* when the landlord is applying for a Monetary Order. As the landlord served the tenant with the application and Notice of hearing by posting it to the tenant's door the landlord's claim for a Monetary Order for unpaid rent has not been served correctly in accordance with s. 89 of the *Act* and therefore this section of the landlord's claim is dismissed with leave to reapply for any unpaid rent for October and November. The landlords written submissions also refer to the cable and utilities which are not included on the second tenancy agreement. However, as the landlord did not testify at the hearing that these utilities were outstanding and has provided insufficient corroborating evidence to determine any amounts owed for cable or utilities then I will not deal with these at this hearing today.

Conclusion

The tenant's application to cancel the Notice to End Tenancy is upheld. The Notice issued on September 15, 2014 is cancelled and the tenancy will continue at this time.

The landlord's application for an Order of Possession is dismissed. The landlord is at liberty to issue a new 10 Day Notice to End Tenancy for unpaid rent for October and November, 2014, if rent or utilities remains outstanding.

The landlord's application for a Monetary Order for unpaid rent for October and November is dismissed with leave to reapply.

As the landlord's claim is unsuccessful the landlord must bear the cost of filing this application.

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 17, 2014

Residential Tenancy Branch

