



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES (COMOX VALEY) and TOTAL CONCEPT
MANAGEMENT and REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF
RP

Preliminary Issues

Upon review of the Landlord's application for Dispute Resolution I note that the Landlord initially applied through the Direct Request process spelling the Tenant's surname correctly. When the Landlord was instructed to complete a regular application the Landlord inadvertently let the "t" off of the end of the Tenant's surname. I note that the Notice of Hearing letter was created using the correct spelling of the Tenant's surname name. Accordingly, I find this to be an obvious clerical error, one where the Tenant ought to have known the application was naming him as the respondent. Therefore, I amended the style of cause on the Landlord's application to include the correct spelling of the Tenant's surname, pursuant to section 64(3)(c) of the Act.

The Landlord listed only one Tenant as respondent to their application; however there are two Tenant's listed as applicants on the Tenants' application. The Landlord provided affirmed testimony that he did not know who T.B. was as she was not his tenant and not listed as a tenant on the tenancy agreement. The Landlord stated that he had seen other people coming out of the rental unit and he suspected that this other person may be occupying the rental unit.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based on the above, I find T.B. is not a tenant; rather, she is an occupant as defined above. Accordingly, T.B.'s name was removed from the style of cause to these disputes, pursuant to section 64(3)(c) of the Act.

The Landlord filed their application listing a corporate name that was different than the corporate name listed on the Tenant's application for Dispute Resolution and was different than the name listed on the tenancy agreement. The Landlord testified that effective July 1, 2014 the purchased the rights of a second realty company and are now doing business as the new corporate name. He confirmed that the original corporation is still operational. The style of cause was amended to show both corporate names as submitted by the Landlord, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on October 24, 2014, to obtain an Order of Possession and a Monetary Order for: unpaid rent or utilities; and to recover the cost of the filing fee from the Tenant for this application.

The Tenants filed seeking an Order for repairs to the unit, site, or property.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony. The Landlord provided documentary evidence that the Tenant was served notice of his application and this hearing by registered mail on October 27, 2014. Canada Post tracking information confirms that Canada Post attempted delivery of the package on October 28, 2014 and that a notice card was left that date to advise the tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on November 3, 2014 that the registered mail was available for pick up.

As of November 13, 2014 Canada Post tracking information confirms that the tenant still did not pick up the registered mail and it could not be returned to the Landlord. Based on this information, I find that the Tenant was provided with 3 opportunities to receive the registered mail and he did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of the Tenant to avoid service and I find the Tenant was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*.

Based on the above, and in consideration that this hearing was scheduled to hear matters pertaining to both the Landlord's and Tenant's application for dispute resolution, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord submitted documentary evidence that the parties entered into a written month to month tenancy agreement that began on May 1, 2013. The Landlord submitted that the Tenant had occupied the rental unit since approximately 2010 and had signed the new tenancy when the Landlord began managing this building. Rent is payable on the first of each month in the amount of \$600.00 and there was no record of a security deposit being paid.

The Landlord testified that he suspects the Tenant has been involved with narcotics and when August 2014 rent was not paid the Tenant had told the Landlord that he was requesting assistance from his mother. The Landlord stated that when rent remained unpaid for three months he posted a 10 Day Notice to the Tenant's door on October 7, 2014.

The Landlord submitted that his maintenance person has seen the Tenant on occasion and that they have both seen other people coming out of the rental unit. He suspects that there may be other people occupying the rental unit. He now seeks an Order of Possession for as soon as possible and a monetary order for the unpaid rent.

Analysis

Given the evidence before me, in the absence of testimony from the Tenant who did not appear despite this hearing being convened to hear matters for his own application, I accept the undisputed version of events as discussed by the Landlord and corroborated by his evidence.

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant was served the 10 Day Notice on October 7, 2014, when it was posted to his door. I do not find it a mere coincidence that the Tenant filed his application for dispute resolution on October 15, 2014; nor do I find it a coincidence that the Tenant made no mention of the 10 Day Notice on their application. Rather, I find it presumptuously suspicious that the Tenant received the 10 Day Notice and did not mention it on his application in order to delay the hearing process and delay the Landlord from being issued an Order of Possession. Accordingly, I find that the Tenant received the 10 Day notice on or before October 15, 2014, and therefore, the effective date was October 25, 2014, pursuant to sections 71 and 46 of the Act.

The evidence supports that the Tenant did not dispute the notice and the Tenant did not pay the full amount owed within the required five day period. Accordingly, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The evidence supports that the Tenant failed to pay rent in accordance with section 26 of the Act, which stipulates that a tenant must pay their rent in accordance with the tenancy agreement. Accordingly, I award the Landlord a Monetary Order for unpaid rent up to October 31, 2014 in the amount of **\$1,800.00**; and I grant the Landlord leave to file another application for any further loss they may have suffered from this tenancy.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$1,850.00** (\$1,800.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenant's application is HEREBY 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: December 01, 2014

Residential Tenancy Branch

