



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC MNSD FF
 CNR LAT

Preliminary Issues

At the outset of this hearing the Tenant, E.Y. indicated the correct pronunciation and spelling of his last name. The Tenant provided affirmed testimony that he understood that the Landlord's hearing documents and evidence were intended for him and his co-tenant S.N.

Upon review of the Landlord's application for dispute resolution and the documentary evidence provided by both parties, I note that E.Y.'s last name had been spelled three different ways on various documents. Some of those documents were signed by E.Y. and showed different spellings. Therefore, based on the foregoing and in the absence of documentary evidence to prove the Tenant's legal surname, his name has been listed in the style of cause on the front page of this decision with all three spellings, pursuant to section 64(3)(c) of the Act.

Introduction

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

The Landlord filed their application on November 14, 2014, to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenant filed his application on November 13, 2014 seeking to cancel the Notice to end tenancy for unpaid rent and to obtain an Order to allow him to change the locks on the rental unit.

The evidence supported that there were two tenants who occupied the property as co-tenants; however, only one Tenant was named on the Tenant's application. Both Tenants appeared at the hearing and submitted testimony. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

The hearing was conducted via teleconference and was attended by two Agents for the Landlord, two Tenants, the Tenants' Advocate and their Witness. Each party provided affirmed testimony.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) # 11.11 provides that except as provided by the Act, the arbitrator may exclude witnesses from the in-person or conference call dispute resolution proceeding until called to give evidence and, as the arbitrator considers it appropriate to do so, may exclude any other person from the dispute resolution proceedings.

In this case the Tenants' Witness indicated that he was in attendance to provide testimony regarding his involvement with the delivery of a fridge and stove. As the matters before me primarily pertained to the non-payment of rent, I excused the Tenants' Witness from the hearing and advised that I would call him back if I felt his testimony would be required. The Witness was not called back into the hearing and did not provide oral testimony, in accordance with Rules of Procedure # 11.11.

The Tenants confirmed receipt of evidence served by the Landlord. The Tenants' evidence was served to the Landlord's Agent by registered mail and tracking information was provided in the Advocate's oral testimony. The Agent submitted that she had not yet picked up her mail and was not disputing service of the Tenants' evidence.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice issued September 4, 2014 be upheld or cancelled?
2. Should the 10 Day Notice issued November 5, 2014 be upheld or cancelled?
3. Have the Landlords proven entitlement to an Order of Possession?

4. Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties entered into a tenancy agreement for a month to month tenancy that commenced on September 1, 2013. The Tenants are required to pay rent of \$800.00 on or before the first of each month and on or before September 1, 2013 the Tenants paid \$400.00 as the security deposit.

The Landlord's Agents (hereinafter referred to as Agents) submitted evidence that the Tenants have not been paying their full rent since June 2014. A 10 Day Notice was issued September 4, 2014, and a second 10 Day Notice was issued November 5, 2014. The Landlord had filed a previous application which was dismissed with leave to reapply on November 3, 2014 due to service issues.

The Agents testified that \$400.00 is paid directly to the Landlord from Income Assistance for E.Y. and that amount has been received as use and occupancy only, as supported by the receipts provided in the evidence. The Tenants have an accumulated balance due of \$2,086.00 as indicated on the November 5, 2014 10 Day Notice and is comprised of \$86.00 owed for June plus \$400.00 for the five months of July through to November 2014. The Agents now seek an Order of Possession and a Monetary Order.

E.Y. testified that rent has been paid in full by means of a verbal agreement he had entered into with the Landlord to provide four fridges and four stoves. The Advocate pointed to the Tenants' evidence which included two written agreements, The first agreement lists payment arrangements for rent for "Oct. 2013" allowing for wall painting, materials and labour; and "Nov./2013" speaks to the Tenant purchasing a stove and refrigerator. The second written agreement lists payment arrangements for "Dec.2013" rent and indicates the December 2013 rent will be reduced by \$150.00 for hallway and stair way cleaning, and repairs to the water tank and door hinges. The Advocate argued that these documents were proof that ongoing rent was to be reduced.

Upon further clarification E.Y. submitted that the agreement for him to provide four fridges and four stoves was a verbal agreement and his Witness was going to testify to the appliances that he had delivered.

S.N. testified that her rent used to be paid directly to the Landlord by Income Assistance and she could not remember when it began to be paid directly to her. She argued that her father had issued three cheques of \$800.00 to the Landlord as payment for their past due rent. S.N. stated she could not provide evidence of those cheques because she could not get ahold of her father prior to this hearing. S.N. then contradicted her testimony by stating several times that "she always pays her rent by cash and the

Landlord refuses to give her receipts". Upon review of the 10 Day Notices S.N. changed her testimony a third time by stating that she had only missed two rent payments.

The Agents disputed the Tenants' submissions and argued that there were no agreements for exchange of services or equipment that would relate to the current unpaid rent amounts. After a brief discussion and in consideration of the holiday season, the Agents offered the Tenants the opportunity to remain in the unit until December 31, 2014.

Analysis

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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 Tenants were served a 10 Day Notice on September 4, 2014 and did not file an application to dispute that Notice. The Landlord's previous application was dismissed with leave to reapply and the 10 Day Notice was still in full force and effect.

The Tenants were served a second 10 Day Notice on November 5, 2014, with an effective date of **November 15, 2014**, in accordance with section 46 of the Act. The Tenant filed an application to dispute the 10 Day Notice issued November 5, 2014, within the required timeframes.

After consideration of the two written agreements provided in the Tenants' evidence, I do not accept that these were agreements to reduce the Tenants' future rents for services or appliances provided by the Tenants. Rather, I find that those agreements, if validated by the Landlord, would be agreements for reductions of rent for the two specific months listed, November 2013 and December 2013.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Notwithstanding the Tenant's submission that he had a verbal agreement with the Landlord to provide appliances, in the absence of proof that it was directly related to his tenancy agreement, such an agreement would be a contract for service. Contracts for service do not fall within the jurisdiction of the *Residential Tenancy Act*.

In the presence of the Tenant's contradictory testimony, and in the absence of documentary evidence to prove the contrary, I find the Tenants provided insufficient evidence to prove rent had been paid in full. Rather, I favor the Landlord's submissions and documentary evidence that rent remains unpaid

Therefore, as the Tenants failed to dispute the September 4, 2014 10 Day Notice, and the Landlord has provided sufficient evidence to support the amount owing listed on the November 5, 2014 10 Day Notice, I find the tenancy had not been reinstated and the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the first Notice, **September 14, 2014**, 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 effective December 31, 2014.

The Landlord has claimed unpaid rent of \$1,286.00 (\$86.00 June, 3 x \$400.00 Jun, Jul, and Aug) in accordance with section 26 of the *Act* that stipulates rent must be paid in accordance with the tenancy agreement. Accordingly, I grant the Landlord's claim of **\$1,286.00**.

As noted above this tenancy ended **September 14, 2014**, in accordance with the first 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for October, November, and December 2014, not rent. The Tenants are still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the period of October 1 to December 31, 2014 in the amount of **\$1,200.00** (3 x \$400.00).

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

Conclusion

The Landlord has been granted an Order of Possession effective **December 31, 2014 at 1:00 p.m. after service upon the Tenants**. In the event that the Tenants do 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 in the amount of **\$2,536.00** (\$1,286.00 + \$1,200.00 + \$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.

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 17, 2014

Residential Tenancy Branch

