



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was personally served on the Tenant on December 16, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on December 26, 2014. With respect to each of the applicant's claims I find as follows:

Preliminary Matter - Jurisdiction:

The landlord testified the parties entered into an oral tenancy agreement that provided that the tenancy would start on October 1, 2013 with rent of \$1000 payable in advance on the 15th day of each month. The tenant submitted that the agreement he has is a hospitality agreement he has in which his rent includes room and board and laundry facilities. He further testified the landlord failed to provide these services. He submits the Residential Tenancy Act does not apply and that I do not have jurisdiction.

Section 4 of the Residential Tenancy Act provides what the Act does not apply to and states as follows:

What this Act does not apply to

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
 - (i) in a community care facility under the [Community Care and Assisted Living Act](#),
 - (ii) in a continuing care facility under the [Continuing Care Act](#),
 - (iii) in a public or private hospital under the [Hospital Act](#),
 - (iv) if designated under the [Mental Health Act](#), in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - (v) in a housing based health facility that provides hospitality support services and personal health care, or
 - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the [Manufactured Home Park Tenancy Act](#) applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

After carefully considering the evidence and the submission of the parties I determined that the Residential Tenancy Act applies. The tenant has exclusive possession of a basement suite. This is residential accommodation. In addition he is provided with board and laundry facilities. However, this does not take this relationship out of the

Residential Tenancy Act. The provision of laundry facilities is a service commonly associated with a residential tenancy. While the provision of board is not commonly associated with a residential tenancy the presence of this service does not remove the relationship from the provisions of the Act. The tenant identified his relationship with the landlord as a hospitality agreement. The Act does not provide that such a contract is excluded. The relationship between the parties is not one that has been excluded.

Further, I do not see how excluding this relationship from the Act would help the tenant. The Residential Tenancy Act gives the tenant certain rights that would be absent if this was seen as a licence to occupy.

Preliminary Matter- Adjournment

Part way through the hearing the tenant requested that he be granted an adjournment in order to obtain legal assistance. The landlord opposed an adjournment. She testified the tenant has missed two rent payments and there has significantly prejudiced her ability to pay her mortgage. She has three children and is 7 months pregnant. She testifies she continues to work because of the need to pay the mortgage and the failure to pay the rent. The tenant read out a letter from his doctor stating he is in a vulnerable condition. The tenant testified he talked to the Newton Advocacy Centre by telephone but they would not act on his behalf. He further testified he was in a car accident on Friday. Finally, he testified he talked to an information officer at the Residential Tenancy Branch who provided him with some information.

After carefully considering all of the evidence I determined this was not an appropriate case to grant an adjournment for the following reasons:

- The tenant was served with a copy of the Application for Dispute Resolution on December 26, 2014 and has had over 3 weeks to seek the assistance of a legal advocate. The tenant failed to prove that he has made reasonable efforts to obtain legal assistance. .

- The landlord served a 10 day Notice to End Tenancy on the Tenant on December 16, 2014. Section 46(5) of the Residential Tenancy Act provides as follows:

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

The tenant has not filed an Application for Dispute Resolution. I determined that an adjournment would unreasonably delay the hearing given the provisions of the Act..

- The tenant acknowledged he has not paid the rent. He testified he did not have sufficient money to pay the rent when due. However, he testified the landlord has failed to provide services required under the oral tenancy agreement including board and laundry services. Section 26(1) of the Residential Tenancy Act provides as follows:

26 (1) 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.

The Residential Tenancy Act does not permit a tenant to withhold the rent unless the tenant first obtains an order to do so from the arbitrator. I determined the prejudice of an adjournment to the landlord is significant.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on October 1, 2013 and continue on a month to month basis. The rent is \$1000 per month payable in advance on the 15th of each month. The tenant did not pay a security deposit.

The tenant has failed to pay the rent for the period December 15, 2014 to January 14, 2015 and January 15, 2015 to February 14, 2015 and the sum of \$2000 remains outstanding. The tenant continues to live in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. The tenant testified the landlord has taken away laundry facilities and failed to provide board which was part of the oral agreement. The landlord disputes this was part of the agreement. Assuming the tenant's testimony to be correct, section 26(1) of the Act provides that the tenant must pay the rent even where the landlord does not do what is required under the tenancy agreement until the tenant has first obtained an order from an arbitrator to reduce the rent.

Accordingly, I granted the landlord an Order for Possession. The usual order is for an Order for Possession on 2 days notice. However, I have considered the testimony of the tenant and his health issues including the letter from his doctor and his recent car accident. I have given the landlord a monetary order for rent for the period January 15, 2015 to February 14, 2015. **I determined it was appropriate to set the effective date of the Order for Possession for February 14, 2015.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of December 15, 2014 to January 14, 2015 and January 15, 2015 to February 14, 2015 and the sum of \$2000 remains outstanding. **I granted the landlord a monetary order in the sum of \$2000 plus the sum of \$50 in respect of the filing fee for a total of \$2050.**

The tenant alleged the landlord failed to provide laundry services and board. The tenant must file an Application for Dispute Resolution before those claims can be adjudicated. The landlord disputed those claims and I have not made a determination on the merits.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: January 20, 2015

Residential Tenancy Branch

