



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Strata Plan KAS 1886
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the person who filed this Application applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution. In the decision this person will be referred to as "R.G.".

R.G. stated that on January 21, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents he wishes to rely upon as evidence were sent to the Respondent, via priority post. The Respondent acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 26, 2015 the Respondent submitted numerous documents to the Residential Tenancy Branch, which the Respondent wishes to rely upon as evidence. The Respondent stated that these documents were not served to R.G. As they were not served to R.G., they were not accepted as evidence for these proceedings.

R.G. and the Respondent were permitted present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

Issue(s) to be Decided

Should an Order of Possession be granted?

Background and Evidence

R.G. identified himself as the current president of the strata corporation, which is the Applicant. He stated:

- that he was the president of the strata corporation prior to March 07, 2014
- that there was a strata meeting on March 07, 2014 in which Witness #2 was elected as the president of the strata corporation
- that the meeting on March 07, 2014 was not a "legal" meeting
- that there was a strata meeting on December 23, 2014, at which he was

“reconfirmed” as president.

R.G. submitted a copy of a document titled “Minutes of Annual General Meeting”, dated December 23, 2014, which he stated he typed himself. R.G. stated that only he and the owners of three other units were represented at the meeting on December 23, 2014. The minutes indicate that 12 units were represented and 2 were not. R.G. stated that a total of 4 people were represented at the hearing, and that the other three people participated by teleconference. The minutes note that R.G. was elected as president and that two of the people present were elected as councillors.

The Respondent, Witness #2, and Witness #3 all stated that Witness #2 was elected president of the strata corporation in March of 2014 and that he is the current president of the strata corporation. The Respondent, Witness #2, and Witness #3 all stated that Witness #3 was elected vice president of the strata corporation in March of 2014 and that he is the current vice president of the strata corporation.

Witness #2 stated that the meeting on December 23, 2014 was called by R.G. and that it is not a “legal” meeting, as it was not called by the current directors of the strata corporation.

Witness #1 stated that he is the owner of the rental unit and that he has a written tenancy agreement that identifies him as the landlord and that identifies the two Respondents as the tenants. The Respondent with the initials “D.R.” stated that she and the other Respondent entered into a written tenancy agreement that names Witness #1 as the landlord. R.G. stated that he does not have a copy of a tenancy agreement for the rental unit so he does not know who is named as the landlord on the written tenancy agreement.

Witness #1 and R.G. agree that at one time R.G. acted as an agent for the landlord of the rental unit. Witness #1 stated that approximately one year ago he informed R.G. that he was no longer acting as his agent. R.G. stated that in September of 2013 Witness #1 told him that he was no longer his agent.

R.G. stated that his company has a “joint venture” that gives him complete authority over the rental unit, including making decisions regarding the rental unit. Witness #1 stated that this company has no legal right to the property, although he acknowledges that it has filed a lien on the property.

R.G. stated that a copy of the joint venture was submitted as evidence to the Residential Tenancy Branch and was served to the Respondent as evidence for these proceedings. The Respondent with the initials “D.R.” stated that this document was not included in her evidence package. The Applicant was advised that the document was not in the evidence package submitted to the Residential Tenancy Branch by the Applicant.

Witness #2 stated that the “joint venture” was the subject of a Supreme Court of British

Columbia decision, dated November 28, 2013, in which it was determined that R.G. does not have any legal interest in the property. As this Court decision may have a significant impact on my decision in this matter, the Respondent was directed to fax a copy of the Court decision to the Residential Tenancy Branch and to mail a copy of the Court decision to the Applicant by February 08, 2015.

On February 10, 2015 the Residential Tenancy Branch received five pages of evidence from the Respondent, four of which are part of a Supreme Court of British Columbia decision. On February 13, 2015 the Residential Tenancy Branch received one page of evidence from the Respondent, in which she confirms that the four pages of evidence were sent to R.G. at the address provided on the Application for Dispute Resolution.

R.G. was advised that he may submit a written response to the Supreme Court of British Columbia decision to the Residential Tenancy Branch and serve a copy of the written submission to the Respondent by February 15, 2015. No evidence had been received from R.G. by the time this decision was rendered.

R.G. stated that on December 24, 2014 a process server served the Respondent with a One Month Notice to End Tenancy for Cause, a copy of which was submitted in evidence. The Respondent with the initials "D.R." stated that this Notice was located in her mail box on December 24, 2014.

The One Month Notice to End Tenancy for Cause identified the strata corporation as the landlord and declared that the Tenant was required to vacate the rental unit by January 31, 2015. The reasons cited for ending the tenancy on the Notice are that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and the tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee.

The Respondent with the initials "D.R." and Witness #1 agree that shortly after receiving the One Month Notice to End Tenancy for Cause the Respondent contacted Witness #1, at which time he informed her he was not ending the tenancy and that he had not asked R.G. to issue the Notice to End Tenancy. The Respondent with the initials "D.R." and Witness #2 agree that shortly after receiving the One Month Notice to End Tenancy for Cause the Respondent contacted him, at which time he informed her that the strata was not ending the tenancy and that he had not asked R.G. to issue the Notice to End Tenancy.

The Respondent stated that she did not file an Application for Dispute Resolution seeking to cancel the Notice to End Tenancy, because she understood it was not a valid Notice.

Analysis

The *Residential Tenancy Act (Act)* defines a landlord as:

- the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement
- the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph
- a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit.

On the basis of the undisputed evidence, I find that the Respondents and Witness #1 have a written tenancy agreement, and that Witness #1 is the landlord of this rental unit.

There is no evidence before me to show that the strata corporation is acting on behalf of the landlord in relation to this tenancy and I therefore find that the strata corporation is not the landlord of this rental unit.

As the strata corporation is not the landlord of the rental unit, I have not determined whether R.G. has the right to act as an agent for the strata corporation, as that matter is not relevant to my decision. Even if I determined that R.G. has the right to represent the strata corporation, which I have not, that issue is irrelevant as the strata corporation has no rights or obligations under the *Act* in relation to this tenancy.

On the basis of the undisputed evidence, I find that Witness #1 had not asked R.G. to act as his agent for this tenancy at any time in 2014.

I find that R.G. has submitted insufficient evidence to show that he has authority to make decisions regarding this tenancy. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that corroborates the R.G.'s testimony that he has legal authority over the property or that refutes Witness #1's testimony that the Applicant does not have legal authority over this tenancy.

I note that although R.G. may have intended to submit a copy of the "joint venture" I find, on the balance of probabilities, that it was not submitted as evidence. This decision was based on the fact the document was not in the package of evidence submitted to the Residential Tenancy Branch and the Respondent stated it was not in her evidence package. I am therefore unable to rely on this document when making a determination in this matter.

In determining that R.G. has failed to establish that he has legal authority over the rental unit, I have considered the portions of the Supreme Court of British Columbia decision that was submitted to the Residential Tenancy Branch on February 10, 2015. There is

nothing in this decision that causes me to conclude that R.G. has any authority over this tenancy.

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons, including if a tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; if a tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and if a tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee.

As R.G. has failed to establish that he is the landlord of the rental unit or that he is acting on behalf of the landlord, I find that he does not have the right to end this tenancy in accordance with section 47 of the *Act*. As R.G. does not have the right to end this tenancy, I dismiss his application for an Order of Possession.

As R.G. has failed to establish that he has the right to end this tenancy, I dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

This tenancy shall continue until it is ended by the Landlord or the Tenant, in accordance with the *Act*.

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: February 16, 2015

Residential Tenancy Branch

