



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on February 6, 2015 and was amended on February 16, 2015 to clarify the rental unit address. The Tenant filed to cancel a 1 Month Notice issued for cause and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2,400.00.

The hearing was conducted via teleconference and was attended by both respondents and the Tenant who provided affirmed testimony. Although both respondents were present at the hearing, only N.S. provided affirmed testimony on behalf of the respondents. Therefore, for the remainder of this decision, terms or references to the respondent Landlord(s) importing the singular shall include the plural and vice versa.

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. Each party confirmed receipt of the evidence submitted by the other.

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. Who is the Landlord, as defined by the Residential Tenancy Act (hereinafter referred to as the Act)?
2. Should the 1 Month Notice to end tenancy issued January 30, 2015 be upheld or cancelled?
3. Is the Tenant entitled to monetary compensation for loss of quiet enjoyment?

Background and Evidence

It was undisputed that the Tenant entered into a verbal tenancy agreement to occupy the basement suite as of August 1, 2013. Rent is payable on or before the first of each month in the amount of \$850.00 and just prior to August 1, 2013 the Tenant paid \$425.00 as the security deposit.

The Landlord N.S. introduced herself as the new owner of the rental house. She testified that the title of the house had been transferred from her sister, H.S. to herself as of November 14, 2014. She asserted that she was the new landlord which is why the 1 Month Notice had been issued listing her name as Landlord.

The Landlord submitted that the 1 Month Notice to end tenancy for cause had been personally served to the Tenant on July 30, 2015, as per the copy provided in the Tenant's evidence.

The 1 Month Notice provided in evidence was issued pursuant to Section 47(1) of the Act listing an effective date of March 1, 2015 for the following reasons:

- Rental unit/site must be vacated to comply with a government order

The Landlord stated that, along with the 1 Month Notice, she also served the Tenant with a copy of the municipality's letter dated January 22, 2015, as provided in the Tenant's evidence. The Landlord argued that she interpreted the municipality's letter as being the "government order" to support the 1 Month Notice.

The Landlord pointed to her written statement submitted in her evidence to support her position that she does not have the money to bring the basement suite up to the standards required by the municipality. She argued that the municipality told her that if she does not have the work performed then she cannot allow a tenant to occupy the suite.

The Tenant responded to the Landlord's submission and said he was never told that the rental unit had a new owner or that he had a new landlord. The Tenant stated that prior to this hearing he had never been told who the actual owner of the house had been. He argued that when he first viewed the rental suite both named respondents were present and he paid H.S. his security deposit. He asserted that he paid his rent to both H.S. and N.S. at times during this tenancy. He noted that he had not paid rent for February or March 2015 as he was waiting to find out the outcome of this hearing. He submitted that for as long as he has lived in this basement suite, H.S., N.S. their brother, and their mother and father have resided upstairs.

The Landlord testified and confirmed that she, H.S., their brother, and their parents had resided in the rental unit at the time the Tenant took possession of the rental unit. She submitted that her sister, H.S moved out of the family house and into their aunt and

uncles home, on November 14, 2014; which is when the owner of the house changed to being N.S. She stated that although H.S. moved out she is still at the family house visiting which is why she can be seen there often.

The Tenant disputed the 1 Month Notice and argued that this is the third eviction notice he has been issued. As per his written submission, he clarified that they have attended two previous dispute resolution hearings. The Tenant noted that the March 26, 2014 Decision cautioned the Landlord that he could be awarded monetary compensation if he was issued another eviction notice that could not be upheld.

The Landlord stated that she had been in attendance with H.S. when showing the rental unit to the Tenant and when they were negotiating the terms of their verbal tenancy agreement. She said that although she did not attend the previous two hearings, she had full knowledge of the previous dispute resolution hearings and the decisions that were issued from those hearings, including the warning about monetary compensation.

Neither party objected to my reviewing the two previous Decisions that were in the RTB records as follows:

October 2, 2013 hearing which cancelled a 2 Month Notice that was served to the Tenant 14 days after he moved into the rental unit

March 26, 2014 hearing which cancelled a 1 Month Notice issued January 31, 2014 issued for cause and included the following warning to the Landlord H.S.:

I draw the landlord's attention to Section 28 of the Act, which states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord. The repeated issuance of invalid and unsubstantiated Notices to the tenant could be construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

As I explained to the landlord, a tenant is entitled to enjoy his home, free from the worry of further, unfounded eviction notices.

I, however, make no finding of a monetary compensation for devaluation of the tenancy as the tenant failed to request such monetary compensation and that issue is therefore not before me; however, the landlord is advised that should she continue to issue such unsubstantiated Notices, the tenant may very well seek compensation for loss of quiet enjoyment.

The Tenant asserted that this latest 1 Month Notice is just another attempt from the Landlords to try and evict him without proper grounds, which is causing him excessive

stress. He argued that he simply wants to be left alone to live in his rental unit as he is tired of having to move around and make his children change schools. He argued that these evictions are causing him so much stress that he was recently involved in a car accident. As a result he is seeking compensation of \$2,400.00, as per the previous decision.

I cautioned the Tenant that in the future he was never to withhold his rent payment, regardless of any disputes he may be having with his landlord. The Tenant confirmed that he now understood that he could not withhold rent unless he had an Order issued to him from the RTB telling him not to pay his rent.

After careful consideration of the foregoing, I issued the following Oral Orders before concluding the hearing:

The Tenant was ordered not to pay anything towards his February or March 2015 rent until he received this Decision listing additional instructions to the Tenant advising how much he was required to pay for February and March 2015 rents.

In the event this Decision was not received by the parties prior to April 1, 2015, the Tenant was ordered to pay his April 1, 2015 rent in full and on time.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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*. That being said, it is questionable who the Landlord is in this matter.

Section 1 of the Act defines a landlord, in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who [emphasis added]
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

In this case the rental unit is located in the basement of a house where a family of five (H.S., N.S., the brother, and their parents) reside upstairs. H.S. and N.S. have both acted in the capacity of either landlord or agent as they were both present when the rental unit was shown to the Tenant; both were present when the Tenant paid the security deposit and negotiated the terms of the verbal tenancy agreement; and both have accepted payment of rent from the Tenant. The Tenant has never been advised who the actual owner was and he was not previously informed that the owner had changed. Furthermore, N.S. affirmed that she had full knowledge of all the previous disputes and Decisions that had been issued.

Based on the above, and notwithstanding the Landlord's submission that the title of the property had been changed into her name, I find that both H.S. and N.S. meet the definition of Landlord in this case, either as owner or as owner's agent, as per Section 1 of the Act.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act [form and content] and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

The Landlord submitted that the 1 Month Notice was issued because she was issued an order from the municipality, as per the letter submitted in the Tenant's evidence.

Upon review of the January 22, 2015 letter issued by the municipality, I do not find this letter to be a "government order". Rather, I find this letter to be a notice to the Landlord reminding them of the need to either "remove or register the suite". I make this finding in part because this letter does not stipulate it is a compliance order, it does not stipulate what the penalty would be if the Landlord does not comply with this letter, such as issuance of a fine; nor does it indicate options for the Landlord, such as a right to appeal or an application for a variance in zoning. The letter simply states:

Kindly, you are required to remove or register the suite. Please attend the [municipality name] Building Permits and Licences Division [phone number listed] for further information regarding secondary suites. You are required to remove or register suite no later than February 24, 2015.

We encourage you to contact Development Services at City Hall telephone [number] for detailed information regarding the permitted uses of your property and to explore what other options are available to you, please contact me at [telephone number] to resolve this matter.

Based on the foregoing, and in absence of any documentary evidence that would prove the rental suite could not be registered with the municipality, I find the Landlord has provided insufficient evidence to uphold the reason listed for issuing the 1 Month Notice to end tenancy issued January 30, 2015. Accordingly, I hereby grant the Tenant's application to have this Notice cancelled.

If however, the Landlord is issued a government order to have the rental unit vacated or removed at a future date, the Landlord would be at liberty to issue another 1 Month Notice to end tenancy at that time.

As noted above, section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the Tenant's testimony that with the Landlord's and/or Agent's issuing him three unsubstantiated eviction notices they have caused him undue stress and a loss of quiet enjoyment. As noted above, I found N.S. and H.S. both to be considered as Landlord, regardless of their changing of ownership of the property, and therefore, both are properly named as respondents to this dispute. I also acknowledge that both N.S. and H.S. had knowledge of and understood the warning issued in the March 26, 2014 Decision, about issuing another unsubstantiated Notice to the Tenant, as listed above.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As such, I make note that this was the third unsubstantiated eviction notice issued to the Tenant in a period of 18 months and was issued ten months after the warning was issued to the Landlord in the March 26, 2014 Decision. Based on the dates each Notice was issued and the time waiting for the hearing to determine the outcomes, I find the Tenant has been disputing and worrying about eviction notices for six months out of his nineteen month tenancy. That being said I have considered that the Tenant has had full use and occupation of the rental unit during that time period. Accordingly, I award the Tenant monetary compensation for loss of quiet enjoyment, in the amount of **\$1,275.00**, which is equal to 25% of six month's rent ($25\% \times \$850.00 \times 6$).

The Tenant did not pay the Landlord February rent of \$850.00 or March 2015 rent of \$850.00, pending the outcome of this hearing. Therefore I offset the above award against the rents owed to the Landlord, pursuant to section 72(2)(b) of the *Act*, which leaves a balance owing to the Landlord of **\$425.00** ($\$850.00 + \$850.00 - \$1,275.00$).

Conclusion

The 1 Month Notice to end tenancy issued for cause on January 30, 2015, is HEREBY CANCELLED, and is of no force or effect. The tenancy continues until such time as it is ended in accordance with the *Act*.

I hereby Order the Tenant to pay the Landlord the balance owed for February and March 2015 rents in the amount of **\$425.00**, immediately upon receipt of this Decision.

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: March 16, 2015

Residential Tenancy Branch

