



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUANE CRANDALL & NORMA CRANDALL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlords for An Order of Possession, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 17, 2015. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Landlord said this application is a result of a previous hearing from January 21, 2015 and decision dated January 22, 2015 when the Tenant applied to cancel the Notice to End Tenancy dated December 19, 2014. The Tenant was unsuccessful and the Landlord did not understand that he could ask for an Order of Possession pursuant to section 55 of the Act. Consequently the Landlord has made this application to request an Order of Possession and to recover unpaid rent.

Issues(s) to be Decided

1. Are the Landlords entitled to end the tenancy?
2. Are the Landlords entitled to an Order of Possession?
3. Are there rent arrears and if so, how much?
4. Are the Landlords entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on July 15, 2014 as a month to month tenancy. The Tenant said rent is \$400.00 per month payable in advance of the 20th day of each month. The Landlord said the rent is \$600.00 per month payable in advance of the 15th day of each month. Both parties agreed there was no written tenancy agreement. No security or pet deposits were required. The Landlord said the Tenant is living in the rental unit and he requested an Order of Possession with an effective date for as soon as possible.

The Landlord said that the Tenant did not pay the full rent for August, 2014. There is unpaid rent in the amount of \$250.00 for August, 2014 and there is \$200.00 of unpaid rent for each month of September, October, November and December, 2014. As well the Landlord said there is \$200.00 of unpaid rent for each month of January and February, 2015 and the Tenant has not paid the March, 2015 rent of \$600.00.

The Tenant said the Landlord has not provided a written tenancy agreement and the verbal agreement they had was for \$400.00 per month payable on the 20th of each month. The Tenant said she has paid rent when it was due therefore there is no unpaid rent. The Tenant continued to say the March, 2015 rent is unpaid but it is not due until March 20, 2015 and she will pay it when it is due. The Tenant continued to say that the Landlord has not complied with repair orders for the rental unit previously issued and that the Landlord has stopped communicating with her. The Tenant said the Landlord has no grounds to end the tenancy and she does not owe any rent.

The Landlord said that in a previous decision dated January 22, 2015, an Arbitrator for the Residential Tenancy Branch agreed with the Landlord that the rent was not \$400.00. The Landlord said this is part of the evidence that he submitted and that he is relying on to establish the rent was \$600.00. The Landlord continued to say that the Tenant paid \$250.00 of rent for the 2 weeks rent from July 15 to July 31, 2014 and then the Landlord applied an additional \$50.00 of the August, 2014 rent to the July, 2014 rent for a total rent payment of \$300.00 for the last two weeks in July, 2014. The Landlord said this is evidence that the monthly rent is \$600.00 per month as the Tenant paid rent for two weeks in July, 2014 in the amount of \$300.00. The Landlord said if \$300.00 was for two weeks rent then it is reasonable to say that rent for four weeks or 1 month is \$600.00.

The Tenant said the rent was \$200.00 for July, 2014 and she paid the Landlord \$50.00 for helping her move. The Tenant said this accounts for the extra \$50.00 on the Landlord's July, 2014 rent receipt. The Landlord said he did help the Tenant move with another gentleman and neither of them was paid for their help. The Landlord said the other gentleman testified to that in a previous hearing.

The Tenant continued to say that she paid \$400.00 per month and the Landlord did not issue any Notice to End Tenancy for Unpaid rent. The Tenant said this is proof that the rent was \$400.00 per month.

The Landlord said he did issue a 10 Day Notice to End Tenancy in October, 2014 for \$150.00 in unpaid rent. The Landlord said this is evidence that the Tenant had unpaid rent in October, 2014. The Landlord continued to say that he issued the rent receipts only for the amount of rent paid and he did not explain any additional rent due or unpaid on the receipts. The Landlord said that he understands that he made mistakes by not having a tenancy agreement and not writing better explanations on the rent receipts.

The Tenant said the Landlord cancelled that Notice to End Tenancy in October, 2014 because he forgot about the hearing. The Landlord agreed that he cancelled the Notice because he forgot about the hearing.

The Landlord continued to say that his evidence was sent into the last hearing dated January 21, 2015 and he thought all the evidence would be brought forward to this hearing. The Landlord said he did not resend all the evidence that he had prepared for the previous hearing in for this hearing. As a result the evidence that the Landlord is relying on was not submitted for this hearing.

The Tenant said in closing that the Landlord has not completed the repairs that he was ordered to do, he is not complying with the Act and the rent was verbally agreed to at \$400.00. As a result there is no unpaid rent and the Landlord does not have the right to end the tenancy. The Tenant submitted a hand written note outlining her position and her view of the situation. There was no corroborating evidence submitted by the Tenant.

The Landlord said closing that the rent is \$600.00/month and as a result the Tenant has \$2,050.00 in unpaid rent. The unpaid rent is made up of \$250.00 for August, 2014, \$200.00 for each month of September, October, November, December, 2014 and \$200.00 for each month of January and February, 2015 as well as \$600.00 for March, 2015. In addition the Landlord requested an Order of Possession for as soon as possible if their application is successful.

Analysis

It is the responsibility of all landlords to do a written tenancy agreement and a move in condition inspection report at the start of a tenancy. This is done to clarify the tenancy information and to get agreement on the condition of the rental unit before the tenancy starts. It is apparent that the Landlords did not meet their responsibilities as landlords as there is no tenancy agreement, no condition inspection reports and no security deposit was required which may have been an indication of what the rent is. When landlords do not meet their responsibilities disputes begin. That is what has happened in this situation. In this situation there is no written tenancy agreement and little supporting evidence therefore I must rely on verbal affirmed testimony and the course of events to try to determine the facts of the matter. The Tenant said the rent receipts are for \$400.00 therefore the rent was \$400.00. The Landlord said he issued rent receipts for the amount of rent paid and he did not indicate on the receipt if the rent was paid in full or if there was unpaid rent still owing. The July, 2014 rent receipt indicates \$250.00 was paid. Further the rent receipt from August, 2014 indicates that \$50.00 of that payment was used for \$50.00 of rent for the two week rental in July, 2014. The Landlord said \$250.00 from July and \$50.00 from August, 2014 equals \$300.00 rent for two weeks which translates into \$600.00 rent for one month. The Tenant said the extra \$50.00 in July, 2014 was payment to the Landlord for help in moving. The Landlord said there was no payment for moving help. It is obvious there is contradictory testimony.

The Tenant continued to say the Landlord did not issue any Notices to End Tenancy for unpaid rent, but that was incorrect as the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent in October, 2014. The previous decision dated January 22, 2015 that was submitted in the evidence indicates that Notice to End Tenancy was for \$150.00 in unpaid rent. Following the math on the receipts it appears that \$300.00 was applied for rent in July, 2014, \$350.00 was applied to August, 2014 rent and then when \$400.00 was paid in September and October, 2014. I cannot calculate or explain the amount of \$150.00 on the Notice to End Tenancy for Unpaid Rent that was issued in October, 2014. The Landlord was unable to explain the \$150.00 amount as well. It is the responsibility of an applicant to prove any claims and support those claims with corroborative evidence. In this situation I find the Landlord has some circumstantial evidence but he has not proven that the rent is \$600.00 per month. The Landlord has written rent receipts for \$400.00 and he has not indicated if the receipts are for full rent payment or partial rent payment and the Landlord has not provide any other written evidence as in a tenancy agreement that would confirm the rent amount. As the Landlord is the applicant it is the Landlord's responsibility to meet the burden of proof. I find the Landlord has not met the burden of proof. Consequently the Landlord has not proven that the rent is \$600.00 per month therefore the Landlord's claim of \$2,050.00 for unpaid rent is not established. Due to the lack of evidence I dismiss the Landlord's monetary claim of \$2,050.00 without leave to reapply.

Section 55 of the Act says that if the Director dismisses a tenant's application to cancel a Notice to End Tenancy or upholds the landlord's Notice to End a Tenancy then the landlord can request an Order of Possession to support that Notice to End Tenancy.

The decision of January 22, 2015 dismissed the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated December 19, 2014 therefore the 10 Day Notice to End Tenancy for Unpaid Rent dated December 19, 2014 is in full effect. I grant an Order of Possession to the Landlord with an effective vacancy date of 2 days after service of the Order on the Tenant as the effective vacancy date on the 10 Day Notice to End Tenancy for Unpaid Rent is well past.

As the Landlord has only been partially successful in this matter I order the Landlord to bear the cost of the filing fee which the Landlord has already paid.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Landlord's monetary claim is dismissed without leave to reapply due to lack of evidence.

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 18, 2015

Residential Tenancy Branch

