



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR OPL MNR FF
CNL CNR RP O FF

Introduction

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

The Landlord filed on April 2, 2015, and completed corrections on his application on April 10, 2015. The Landlord made application to obtain Orders of Possession for: Landlord's use of the property and for unpaid rent or utilities; plus a Monetary Order for: unpaid rent or utilities and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on March 20, 2015, to cancel Notices to end tenant for: Landlord's use of the rental property and unpaid rent or utilities, for repair orders and other issues; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. The Landlord provided documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on April 13, 2015. Canada Post tracking information confirms that the Tenant signed for the registered mail on April 17, 2015.

No one was in attendance on behalf of the Tenant, despite the Tenant being served Notice of this proceeding in accordance with the Act, and despite this hearing being convened to hear matters pertaining to the Tenant's own application. Based on the forgoing, I concluded that the Tenant was provided ample notice of this proceeding and I continued in absence of the Tenant.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Should the Landlord be granted a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord testified that when he purchased the property on March 26, 2014, the Tenant had already been occupying the property based on a family arrangement. The Landlord stated that the property had previously been owned by the Tenant's grandfather, and the property was left to the Tenant's disabled brother when the grandfather passed away. Once the estate process had been determined the property was sold to the Landlord, who is not related to Tenant's family.

The Landlord submitted that once he gained ownership of the property he entered into a verbal tenancy agreement with the Tenant where the Tenant would pay \$1,200.00 rent on the first of each month for the main floor of the house plus the shop. The Tenant was required to pay all utilities and initially had the utility accounts in his own name. The Landlord testified that he had no record of a security deposit being paid by the Tenant.

The Landlord submitted evidence that on March 11, 2015 his agent personally served the Tenant with a 2 Month Notice to end tenancy for landlord's use. A second copy of the 2 Month Notice was sent to the Tenant via registered mail on March 13, 2015. On March 17, 2015, the Landlord had his agent serve the Tenant a 10 Day Notice for \$1,200.00 in unpaid rent that was due March 1, 2015, and when the Tenant refused to open the door the 10 Day Notice was posted to the door. A second copy of the 10 Day Notice was served to the Tenant via registered mail. The Canada Post tracking information website indicates that the Tenant signed to pick up both Notices to end tenancy on March 24, 2015.

The Landlord submitted evidence which included a copy of a natural gas bill and a print out of the status of the hydro account. The Landlord testified that when the Tenant failed to pay the utility bills the services were turned off so the Landlord placed the natural gas and hydro accounts in his name. The Landlord now seeks to recover the costs of the outstanding utilities. The Landlord submitted that he had not served the Tenant with a written demand for payment of utilities with copies of the actual utility invoices. He indicated that the only time he served the Tenant with copies of the invoices was as evidence with his application for Dispute Resolution.

The Tenant had submitted documentary evidence which included a copy of a Notice Terminating or Restricting a Service or Facility issued March 11, 2015. The Landlord testified that he had served that Notice to the Tenant along with the 2 Month Notice to end tenancy to restrict the Tenant's use of the shop space and/or garage. The Landlord indicated that the reduced services were to be effective April 1, 2015 at which time the Tenant's rent would be reduced to \$1,000.00.

The Landlord testified that the Tenant remains in the rental unit with full use of the shop/garage and he has not paid rent for March, April or May 2015; nor has he paid for the utilities. The Landlord now seeks an Order of Possession and a Monetary Order.

There was no oral evidence submitted to support the merits of the Tenant's application as the Tenant was not in attendance or represented at the hearing.

Analysis

In consideration of the undisputed evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding and despite this hearing being convened to hear matters pertaining to the Tenant's application, I accepted the undisputed version of events as discussed by the Landlord and corroborated by his evidence.

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*.

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for 27 minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the Tenant's application is dismissed, without leave to reapply.

Section 55(1) of the Act stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession, and the director dismisses the tenant's application or upholds the landlord's notice.

Based on the above, the Tenant's application to dispute the 10 Day Notice and the 2 Month Notice to end tenancy was dismissed and the Landlord attended the hearing and requested an Order of Possession. Accordingly, I uphold both the 10 Day Notice and the 2 Month Notice and grant the Landlord an Order of Possession.

The first Notice served upon the Tenant was the 2 Month Notice for landlord's use which was served on March 11, 2015. Upon review of the 2 Month Notice I find it was

issued and served upon the Tenant in accordance with section 49 of the Act and the effective date of the 2 Month Notice is **May 31, 2015**.

Section 51(1) of the Act stipulates that a tenant who receives a 2 Month Notice pursuant to section 49 of the Act, is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of month's rent payable under the tenancy agreement.

Section 51(1.1) of the Act states that a tenant referred to in subsection (1) may withhold the amount authorized from the **last** month's rent, and for the purposes of section 50 (2) that amount is deemed to have been paid to the landlord [my emphasis added].

Upon review of the Notice Terminating or Restricting a Service or Facility, I find that Notice not to be completed in accordance with section 28 of the Act, as the effective date was not a proper thirty days. If the Notice was issued and served upon the Tenant on March 11, 2015, it would not become effective until April 30, 2015. Accordingly, the Notice Terminating or Restricting a Service or Facility was invalid and of no force or effect and the rent remained at \$1,200.00 per month.

Based on the above, the Tenant was required to pay his full rent for March and April 2015, and would not have been entitled to withhold rent until May 2015, the last month rent was due in accordance with the 2 Month Notice. Therefore, when rent remained unpaid for March 2015, the Landlord was entitled to serve the Tenant the 10 Day Notice to end tenancy for the unpaid rent.

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.

The 10 Day Notice was posted to the Tenants door and sent by registered mail. The registered mail was signed received by the Tenant on March 24, 2015. Therefore, the effective date of the 10 Day Notice was **April 3, 2015**.

Based on the above, the earliest effective date between the 10 Day Notice and the 2 Month Notice was **April 3, 2015**, which has already past. Accordingly, as both Notices were in full force and effect, I grant the Landlord an Order of Possession effective **2 Days upon Service**.

The Landlord claimed unpaid rent of \$2,400.00 which was comprised of \$1,200.00 rent for March 2015 plus \$1,200.00 for rent for April 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent for March and April 2015, in the amount of **\$2,400.00**.

As noted above, the Tenant is entitled to compensation for being served the 2 Month Notice and the Landlord will not regain possession of the rental unit until service of the

Order of Possession. There is potential for the Landlord to suffer additional losses with respect to this tenancy; therefore, I decline to award recovery of the May 2015 rent payment and I grant the Landlord liberty to file another application if additional losses are incurred.

The Landlord has sought recovery of \$621.10 in natural gas and hydro utility costs; however, at the time the Landlord filed his application for Dispute Resolution, the Landlord had not given the Tenant a 30 day written demand for payment and had not given the Tenant copies of the utilities bills. Therefore, I find the Landlord's application to recover utility costs to be premature and it is dismissed, with leave to reapply.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service 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 Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$2,450.00** (\$2,400.00 + \$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

The Tenant's application for Dispute Resolution is HEREBY DISMISSED, without leave to reapply.

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: May 04, 2015

Residential Tenancy Branch

