



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, OLC, PSF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for order of possession for the rental unit, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and an order requiring the landlord to provide services or facilities required by law.

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the respondent, AA, owner of the numbered corporation, confirmed receipt of the tenant's application of the tenant. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order of possession for the rental unit and to orders for the landlord?

Background and Evidence

The tenant submitted that the tenancy began in March 2013 and that monthly rent is \$450.00.

In support of his request for an order of possession for the rental unit, the tenant submitted that after he began his tenancy in March 2013, he assumed live-in caretaking and maintenance duties for the landlord in the hotel type residential property, and his room was part of his employment there. The tenant submitted further that when he

attempted to claim compensation for injuries received in an accident on the job, the landlord began constructively dismissing the tenant in June 2014. The tenant submitted further that he understood he was still employed by the landlord, even after June 2014, on an emergency basis, when the landlord began refusing his monthly rent payments, only finding out in March 2015, that he was no longer employed.

The tenant submitted further that in November 2014, the landlord began issuing 2 Month Notices to End Tenancy for Landlord's Use of the Property ("Notice") to the other tenants living in the residential property, but did serve the tenant a Notice. The tenant submitted that the landlord has reached a financial settlement with all the other tenants, but failed to make such an offer to the tenant.

The tenant submitted that the landlord turned off water to the building on April 20, 2015, and that the local police department were called by the landlord to have the tenant removed. According to the tenant, the police department recognized the tenant's rights to live in the building, but suggested he vacate the building for his own safety until this matter is resolved.

The tenant submitted that although he still has a key to his room, he is denied access through the main part of the building and is only permitted to attend his rental unit with guided assistance.

As to the landlord's termination of the water service, the tenant submitted that his health and safety are now at risk, resulting in his inability to live in the rental unit.

The tenant submitted that he is now homeless as the result of the landlord's termination of services to the building.

The tenant's relevant documentary evidence included, but was not limited to, a Notice dated March 17, 2015, informing the tenant he is a squatter and that the tenant had 10 days to vacate the rental unit due to structural repairs, as claimed by the landlord and copies of claims made in the Provincial Court of British Columbia made by the tenant, with the landlord's responsive claim for unpaid rent through March 2015.

Landlord's response to the tenant's application-

The landlord submitted that because the tenant has not paid rent since June 2014, the tenant is a squatter in the building, having no rights of a tenant under the Act.

The landlord submitted that the tenant informed him some time ago that he was moving to another province, but then changed his mind, although the landlord had given the tenant \$500.00.

The landlord submitted further that he gave a notice to the tenant in September 2014, to vacate the rental unit. Into evidence, the landlord supplied a copy of a 1 Month Notice to End Tenancy for Cause said to be issued to the tenant.

The landlord submitted further that the police department have threatened to throw out the tenant when they found out he is a squatter in the building.

Landlord's witness-

In response to my question, the landlord's witness and manager for the residential property, confirmed that the tenant has attempted to pay rent, but the payments were refused.

Analysis

It is important to note that the landlord has not submitted evidence that there was a written tenancy agreement, as is the obligation of a landlord under section 13 of the Act.

In considering the landlord's argument that the tenant is not a tenant, but rather was a squatter, there was no dispute and I accept that there was a tenancy formed in March 2013, when the tenant began residing in the rental unit, and that the tenant was employed by the landlord in an indeterminate capacity. I find that evidence shows that this relationship continued without any noted issue until June 2014. The evidence suggests that when the tenant made a worker's compensation claim, the employment aspect of the tenancy deteriorated at that time.

I do not accept the landlord's argument that the tenancy terminated at that point due to non-payment of rent. As the landlord's witness confirmed refusing the tenant's payments, the landlord may not now use this basis to declare the tenancy over.

Under section 46(1) of the Act, a landlord's remedy to end a tenancy based upon unpaid rent is to issue the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which in this case, there is no evidence to suggest the landlord issued this Notice. If a tenant fails to pay rent after being served a 10 Day Notice, the landlord may apply to the Residential Tenancy Branch ("RTB") for an order of possession for the rental unit.

I additionally find that the landlord's evidence that he issued the tenant a 1 Month Notice to End the Tenancy for Cause and the landlord's claim in the Provincial Court claiming unpaid rent shows that the landlord considered the applicant here a tenant.

Due to the above, I find the tenant was not a squatter and was in fact a tenant, with the rights granted under the Act, among them, in this case, the right to possess and gain access to the rental unit.

Order of possession for the rental unit-

Section 54 of the Act states a tenant may make an application requesting an order of possession if the tenant, under the terms of a tenancy agreement, is entitled to occupy the rental unit and has not been allowed to do so by the landlord. Section 54(2) states that the director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

In the case before me, I find the tenant submitted sufficient evidence, that the tenant is entitled to the occupancy and possession of the rental unit in question. I find further the evidence shows that the landlord has not provided access to the rental unit as agreed upon.

Therefore, I Order that the landlord provide the tenant with immediate possession of the rental unit, including unfettered access to the main entrance to the residential property and common area. I further grant the tenant an order of possession for the rental unit, effective immediately. The order of possession is enclosed with the tenant's Decision.

Order to provide for services-

Residential Tenancy Branch Policy Guideline #22 suggests that:

A landlord must not:

- *terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation.*

The policy goes on to provide, in part:

An "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is "essential" to the tenant's use of the rental unit ... the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation.

I find that water, which includes hot water, is an essential service necessary for the tenant's use of the rental unit.

Pursuant to section 62 of the Act, I therefore order that the landlord immediately restore water service to the rental unit, including the common area, and no later than 3 days after receipt of this Decision.

The parties are still at liberty to reach a mutual written agreement ending this tenancy under mutually satisfactory terms and conditions.

Conclusion

The tenant's application is granted as he has been awarded an order of possession for the rental unit and an order directing the landlord to immediately restore water service to the rental unit and common area.

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: June 12, 2015

Residential Tenancy Branch

