



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: OPR, MNR
Fort the tenant/applicant: CNR

Introduction, Preliminary and Procedural Matters-

This hearing was convened to deal with two applications, one by the landlord and one by the tenant/applicant, "LA".

The landlord's application was originally conducted by way of a direct request proceeding, pursuant to section 55(4) of the Residential Tenancy Act ("Act"), via the documentary submissions only of the landlord, requesting an order of possession for the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") and a monetary order for unpaid rent.

On May 12, 2015, an adjudicator of the Residential Tenancy Branch ("RTB") issued an Interim Decision on the landlord's application, which stated that there were two separate tenancy agreements for tenants' "CA" and "SA", each listing the same amount of monthly rent. The adjudicator also had questions as to whether CA and SA were co-tenants and part of the same tenancy or were separate. The adjudicator also noted that another party not listed in the tenancy agreements contested the Notice by filing an application for dispute resolution and that hearing had previously been scheduled to be heard by me.

In the Interim Decision of May 12, 2015, the adjudicator ordered the direct request proceeding to be reconvened to a hearing in order to address the outstanding issues regarding this application and in order to make findings on the landlord's application for dispute resolution under the direct request process.

This was that participatory hearing.

Additionally, the adjudicator, in the Interim Decision, did not order that the landlord's application be scheduled at the same time as the tenant/applicant's hearing; however, by administrative process, the landlord's application was made a cross application with the tenant/applicant's application, and both applications were before me for this hearing.

At this participatory hearing, the landlord and SA and LA were present, and neither party raised any issue about service of the applications or evidence.

As to LA's application seeking cancellation of the Notice, LA submitted that she was the mother of CA and SA, and moved into the rental unit when CA moved in.

Thereafter all participants 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 written 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

Does LA have standing to make an application for dispute resolution against the landlord?

If so, is LA entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent?

Background and Evidence

The landlord submitted two tenancy agreements. On one tenancy agreement, SA and another party, "JA", were listed as tenants. As per that agreement, the tenancy began in March 2011, and monthly rent was listed at \$1450.00. Also on this tenancy agreement, JA's name was marked through with presumably a pen later in the tenancy, with the notation that JA had moved. The second tenancy agreement was signed by CA, for a tenancy starting in October 2012, for a monthly rent of \$1450.00.

When asked to explain, the landlord stated that SA and his uncle, JA, were the original tenants; however, after the tenancy began, JA vacated the rental unit and his brother, CA moved into the rental unit, along with their mother LA.

The landlord further explained that CA insisted on signing a tenancy agreement in order to receive social assistance payments.

The landlord confirmed that there was only one tenancy, between the landlord and CA and SA, and that the monthly rent obligation was \$1450.00, explaining that SA and CA were now co-tenants, as JA vacated the rental unit during the tenancy.

As there was a question as to whether LA, the applicant in one application, was a tenant, LA, in response to my question, submitted that she was a tenant in the rental unit as she moved into the rental unit when CA moved in, in October 2012, and that she pays \$450.00 per month as rent. LA submitted further that she has made payments to the landlord herself.

In response, the landlord denied ever receiving rent from LA and that she receives \$375.00 per month directly as social assistance payments on behalf of CA, and that CA typically collects the rest of the rent and brings the balance to the landlord.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

Landlord's application-

The landlord stated that she served the Notice to the tenants by hand delivering the Notice to CA, on May 2, 2015. The Notice listed unpaid rent of \$3130.00 due as of May 1, 2015 and an effective move-out date of May 12, 2015.

The Notice informed the tenants that they had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that since April 2015, she has only received payments of \$375.00 each month from social assistance and that the tenants have not made any other payments, leaving a total rent deficiency of \$3130.00, as of May 2015.

In response to my question, the landlord submitted that the unpaid rent listed on the Notice was comprised of a rent deficiency for November 2013, in the amount of \$830.00, \$150.00 for November 2014, and \$1075 for April and May 2015, each.

Tenant's response-

Tenant SA claimed that there were sewage issues with the rental unit and did not disagree with the landlord's submissions as to the amount of unpaid rent.

Analysis

LA's Application-

I was unconvinced by LA's statement, without further evidence, that she paid rent directly to the landlord and was therefore a tenant; rather, I find the landlord's evidence that CA collected the rent and paid it directly to the landlord to be convincing, as there was clarity of detail as to the payments and as LA had not signed a written tenancy agreement with this landlord.

I find that LA had the status of occupant, and that CA and SA were the tenants, supplementing their monthly rent payments with LA's contribution.

As I find that LA was not a tenant, I find she had no standing under the Act to make an application for dispute resolution against the landlord, and therefore, LA's application is dismissed.

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In the case before me, I find the landlord submitted sufficient oral and documentary evidence that the tenants owed the landlord rent when the Notice was issued, that they did not pay the rent owed to the landlord

within five days of receiving the Notice, and that they did not have legal authority to withhold rent.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I further find that the landlord is entitled to an order of possession for the rental unit effective 2 days after service of the order upon the tenants. I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants. For enforcement purposes, I have removed LA's name from further consideration on this order and in this matter.

I also find that the landlord is entitled to a monetary award of \$3130.00 for unpaid rent through May 2015. I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$3130.00, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants. For enforcement purposes, I have removed LA's name from further consideration on this order and in this matter.

The landlord is at liberty to file another application seeking loss of rent revenue for June onwards.

Conclusion

LA's application is dismissed, as I have found she had no legal standing to file an application under the Act.

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

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 19, 2015

Residential Tenancy Branch

