



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY REALTY LTD DBA REMAX CITY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF; CNR, MNDC, MNSD, ERP, PSF, LRE

Introduction

This hearing dealt with the corporate landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The corporate landlord's claim was brought against the tenants KOR and SG.

The corporate landlord claims for \$6,300.00, which it calculated on the basis of six months of unpaid rent at a monthly rent of \$1,050.00.

This hearing also dealt with the tenants' (FW and KOR) application pursuant to the Act for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenants' claim was brought against the corporate landlord and the named individual landlord (the agent).

The agent, successor landlord and tenant FW (the tenant) appeared. All persons in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The corporate landlord (as represented by the agent) is the agent of the successor landlord.

The agent testified that the corporate landlord served the tenants KOR and SG with the dispute resolution package on 28 May 2015 by registered mail. The corporate landlord provided me with Canada Post tracking numbers that showed the same. On the basis of this evidence, I am satisfied that the tenants KOR and SG were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Service of Tenants' Application

The tenant testified at the hearing that he served the corporate landlord and agent with the tenants' dispute resolution package by email. The agent testified that they did not receive the tenants' dispute resolution package.

Method for service for the tenants' application is prescribed by subsection 89(1) of the Act:

An application for dispute resolution ... when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;...

Email is not an acceptable method of service. Further, the corporate landlord and agent did not have actual notice of the tenants' application. As such, the tenants' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Preliminary Issue – Tenant's Status at Hearing

The tenant is not listed as a respondent in the corporate landlord's application. The tenants' application, in which the tenant is an applicant, has been dismissed with leave to reapply. At the hearing the tenant confirmed that he was only appearing to act on his own behalf and not as agent for the respondents to the corporate landlord's application.

Subsection 64(4) sets out that a tenant of a landlord who is likely to be materially affected by the determination at the hearing can participate in the hearing. I find that the tenant may participate as an interested party in the corporate landlord's application pursuant to subsection 64(4) as his interests are likely to be materially affected by the outcome of the corporate landlord's application.

Issue(s) to be Decided

Is the corporate landlord entitled to an order of possession for unpaid rent? Is the corporate landlord entitled to a monetary award for unpaid rent? Is the corporate landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the corporate landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The tenant testified that monthly rent is \$1,000.00 per month. The corporate landlord set out in its application that it believes that rent is \$1,050.00 per month. The agent provided testimony at the hearing that monthly rent is \$1,000.00 per month. The agent testified that he received this information recently from the previous owner of the rental unit (the prior landlord). I was not provided with a copy of a written tenancy agreement.

Until this year, the rental unit was owned by the prior landlord. At some point in the last year the prior landlord fled the country to avoid creditors. The parties agree that the prior landlord abandoned the property.

The tenant testified that in December 2014 an agent from a bank attended at the rental unit looking for the prior landlord. The tenant testified that the bank agent returned in January 2015. The tenant testified that the bank agent told the tenants not to pay rent. The tenant testified that he did not recall the name of the bank agent and all of these arrangements occurred verbally.

I was provided with a 10 Day Notice dated 15 February 2015 (the February Notice). That notice was to the tenants KOR and SG. That notice set out that those tenants had failed to pay \$3,150.00 in rent that was due 1 February 2015. The February Notice included rent for December 2014, January 2015 and February 2015. The February Notice provided for an effective date of 25 February 2015.

The proof of service dated 15 May 2015 indicates service to a FW (not the same last name as the tenant). That service was in relation to the February Notice. None of the parties know of any person by that name. The agent testified that they believed that to be one of the tenants at the time they served the notice and had identified that name from a piece of mail that had been delivered to the rental unit. The agent testified that it was difficult to identify who was living in the rental unit and their legal names.

On 14 May 2015 the agent issued the 10 Day Notice to the tenants FW and KOR. That notice set out that the tenants had failed to pay \$6,300.00 in rent. That notice set out that rent was \$1,050.00 per month and that the tenants had not paid for December 2014 through May 2015 inclusive. The notice set out an effective date of 29 May 2015.

The tenant testified that he received the 10 Day Notice dated 14 May 2015 on 19 May 2015 when he returned from vacation. The tenant testified that after he received the 10 Day Notice in May he did not follow up with the bank about resuming rent payments.

Ownership of the rental unit transferred to the successor landlord on or about 21 May 2015. The successor landlord testified that she asked the tenants to leave or begin paying rent. They refused to do either. The successor landlord testified that she has not received any rent.

The agent testified that the prior landlord stated that the tenants have not paid any rent since approximately August 2014. The agent testified that to his knowledge the tenants were not permitted to deduct any amount from rent under the Act. The agent testified that he has not received any rent payments since the issuance of the 10 Day Notice.

At the hearing the agent stated that if an order of possession were granted in application, the corporate landlord would accept an order that was enforceable no earlier than 14 July 2015.

The landlord provided me with a letter of authorization from the successor landlord. I was not provided with a letter of authorization from the prior landlord or any receiver. I was not provided with any statement of adjustments or an assignment of rents.

Analysis

I accept the proof of service for the February Notice. I find that the corporate landlord's employee delivered the February Notice to an adult that apparently resides with the tenants. Pursuant to paragraph 88(e) service of a document such as the February Notice may be served in this manner. On this basis, I find that the February Notice was served 15 February 2015.

On the basis of the tenant's admission, I find that the tenants KOR and FW were served with the 10 Day Notice on 19 May 2015.

On the basis of the testimony provided by the agent and the tenant, I find that the tenancy agreement provided for monthly rent of \$1,000.00. The only evidence provided establishes that rent was due on the first of the month. I have not been provided with any evidence that severs the presumption of a joint tenancy between the three tenants: FW, KOR, and SG.

The corporate landlord incorrectly set out the monthly rent as \$1,050.00 in its application and on the 10 Day Notice.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the corporate landlord put the incorrect rent amount on the 10 Day Notice and used that incorrect rent amount to calculate the rent arrears. This mistake does not go to the substance of the 10 Day Notice, that is, there was outstanding rent owed by the person to whom the notice was delivered. The tenants KOR and FW knew that the 10 Day Notice was issued to them and knew that they had not paid rent to anyone for their use of the rental unit. Further, the discrepancy is not a large amount relative to the rent arrears. For these reasons, I am exercising my discretion to amend the 10 Day Notice to change the arrears amount to \$6,000.00.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

There are no other deductions from rent permitted under the Act or regulations. The tenant(s) have not provided me with any evidence that they were permitted to deduct any amount from rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

As indicated above, I have found that the tenants did not pay rent as provided for in the tenancy agreement. The tenant admits that he has not paid rent and submits that he did so at the direction of a bank employee. The tenant submits that he did not have to pay rent because of the bank agent's direction. I find that when the agent provided the February Notice to the tenants the tenants, and in particular KOR, were put on notice that the corporate landlord was now acting as landlord and managing the rental unit. While the bank agent's representations may have prevented the bank and the prior owner from removing the tenants prior to the issuance of the February Notice, subsequent to that notice the tenants were aware that the corporate landlord was acting as a landlord. The tenant admits that he did not make any inquiries of the bank when he was delivered the 10 Day Notice.

As the tenants have failed to pay their rent in full when due, I find that the 10 Day Notice issued 15 May 2015 is valid. The right to enforce the 10 Day Notice passed to the successor landlord on or about 21 May 2015. Accordingly, the successor landlord was entitled to possession of the rental unit on 29 May 2015, the effective date of the 10 Day Notice. As this date has now passed, the corporate landlord (as agent for the successor landlord) is entitled to an order of possession effective two days after it is served upon the tenant(s).

Only tenant KOR was served with both the 10 Day Notice and notice of the landlord's application. Accordingly, the order of possession will name the tenant KOR only; however, this has little practical effect as the order is also valid against anyone on the premises.

Section 1 of the Act defines "landlord":

"landlord", in relation to a rental unit, includes 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
 - (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;

From this provision, it can be seen that the definition of "landlord" is highly inclusive. The prior landlord, successor landlord and corporate landlord are all "landlords" within the meaning of the Act.

For the purpose of determining the monetary entitlements in this application it is important to define the interests of the various actors acting as "landlords" at the various stages in the tenancy.

There are three relevant points in the timeline for the purposes of this application:

- November 2014: prior landlord abandons rental unit;
- 15 February 2015: tenants served February Notice; and
- 21 May 2015: ownership of the rental unit transferred from the prior landlord to the successor landlord.

I find from the time period November 2014 to 15 February 2015, the only "landlord" was the prior landlord. I find from the time period 15 February 2015 to 21 May 2015 the "landlords" were

the prior landlord and the corporate landlord (as agent for the prior landlord). I find from the time period 21 May 2015 to date the "landlords" are the successor landlord and the corporate landlord (as agent for the successor landlord).

The persons entitled to rent under the tenancy agreement were originally the prior landlord and subsequently the successor landlord. I have not been provided with evidence that satisfies me that it would be appropriate to make an order that the corporate landlord receive the rent money on behalf of the prior landlord. In particular, if there has been an assignment into bankruptcy or a foreclosure on the property, I have not been provided with any indication that the corporate landlord is the correct receiver of any rents due or that there has been an accounting for rent in the statement of adjustments. Furthermore, there is no letter of authorization from the prior landlord. Accordingly, while I find that the corporate landlord is entitled to an order of possession on the basis that rent was unpaid, I decline to order the monetary order for rent arrears that accrued prior to 21 May 2015 at this time, that is \$6,000.00 as the corporate landlord has failed to establish its entitlement to receive the funds on behalf of the prior landlord or its creditors. I dismiss this portion of the corporate landlord's claim with leave to reapply.

As the corporate landlord has been successful in its application it is entitled to recover the filing fee from the tenant in the amount of \$50.00. I am not awarding recovery of the full filing fee amount of \$100.00 as the enhanced amount was required because of the claim for a monetary order over \$5,000.00. The landlord has not been successful in its monetary claim, thus the reduced amount is ordered recovered. The \$50.00 may be recovered from the security deposit pursuant to paragraph 72(2)(b) of the Act.

Conclusion

The landlord is provided with a formal copy of an order of possession effective one o'clock in the afternoon on 14 July 2015. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$50.00. The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 08, 2015

Residential Tenancy Branch

