Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JABS CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MRN, FF (Landlord's Application)
MT, CNR, AS, O, OLC (Tenant's Application)

Introduction

This hearing dealt with cross applications. In the Landlord's Application for Dispute Resolution they sought an an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

In the Tenant, B.A.'s, Application for Dispute Resolution, she sought an Order for more time to make an application to set aside the Notice to End Tenancy for Unpaid Rent or Utilities issued on June 2, 2015 (the "Notice"), an Order canceling the Notice, an Order allowing her to assign or sublet the rental unit, and an Order that the Landlord provide her with a copy of the Tenancy Agreement.

Both parties attended at the hearing, although the Tenant, S.S., called in 15 minutes into the hearing. The Landlord was represented by C.F., the Property Manager, and S.R., the Residential Manager. C.F. spoke on behalf of the Landlord and will be referred to as "Landlord" for the purposes of this hearing. The Landlord and both Tenants gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

At the outset, the Tenant, B.A., testified that she was not served with the Landlord's Application for monetary relief.

In response, the Landlord testified that he individually served both the Tenants with the Notice of Hearing and their Application on July 13, 2015 by registered mail. The Landlord provided the registered mail receipt and tracking number in evidence. The Landlord also confirmed that the package sent to the Tenant, S.S., was sent to the forwarding address provided by S.S. and that in fact, S.S. signed for receipt of the package. S.S. took no issue with service.

B.A. stated that the package “may be in her mail box”, but that she hadn’t checked. In any case, pursuant to section 90 of the *Residential Tenancy Act,* documents served by registered mail are deemed served 5 days later; accordingly, I find the Tenants were duly served as of July 18, 2015.

The Landlord confirmed the Tenant, B.A. received a copy of the tenancy agreement at the time she signed, as well as with the Application materials which were served by registered mail. As I have found she was served with the materials, I dismiss her claim for an Order pursuant to section 62(3) that the Landlord comply with the *Act* and provide her a copy of the tenancy agreement.

B.A. confirmed that S.S. had vacated the rental unit on May 17, 2015. She also confirmed that she intended to move from the rental unit, “hopefully by the weekend” and as such her application pursuant to section 65(1), to assign or sublet the tenancy was not required. Accordingly, I dismiss her application for this relief.

The Landlord testified that while he was pleased to hear the Tenant intended to move, that she had made this promise in the past, and as such he requested an Order of Possession to ensure that he was able to rent the unit to other tenants.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant, B.A., entitled to more time to make her application to set aside the Notice?

2. Should the Notice be cancelled?

3. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated the tenancy between the Landlord and both Tenants began on May 1, 2015. Rent was payable in the amount of $855.00 and the Tenants paid a security deposit of $427.50.

The Tenant applied for more time to cancel the Notice. When I asked her why she did not apply within the five days prescribed by section 46(4)(b) of the *Act,* she responded that she "missed that part" and "did not read the whole document". She provided no further evidence in respect of this request but stated that she had another residence to move to and that she was just waiting to hear from her "worker" as to the arrangements for movers.

The Tenant stated that as she was in receipt of disability benefits, her rent was paid directly from the Ministry to the Landlord.

The Landlord testified that the Tenant failed to pay rent for June and as a result on June 2, 2015, the Landlord issued the Notice in which the amount of $855.00 was noted as due as of June 1, 2015.

The Landlord testified that the Notice was posted to the rental unit door on June 2, 2015. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenants was served with the Notice as of June 5, 2015.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, June 10, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant filed a Tenant's Application for Dispute Resolution on June 25, 2015.

The Landlord testified that on June 4, 2015 the Tenants paid $427.50 towards the outstanding rent, and paid a further $427.50 on July 2, 2015 such that as of July 2, 2015 the June rent had been paid. The Landlord confirmed that the July 2015 rent remained outstanding in the amount of $855.00. The Landlord also confirmed he sought recovery of the $50.00 filing fee for a total monetary claim of $905.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

As the Tenant did not apply for dispute resolution within 5 days of receiving the Notice, it is necessary to consider section 59(1) of the Act and whether exceptional circumstances exist. I find that the Tenant, B.A., has not provided evidence of such

exceptional circumstances, noting that she simply “missed that part” and did not read the entire Notice. Accordingly, her application for more time to dispute the Notice is dismissed.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

The Tenants have not paid the outstanding rent and failed to make their application in time. As such, they are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

It appears as though B.A.’s “share” of the rent continued to be paid by the Ministry after S.S. vacated the rental unit, rather than the full amount of rent due pursuant to the rental agreement. As I informed the parties during the hearing, the parties are jointly and severally liable for the payment of the full amount of monthly rent having both signed the residential tenancy agreement. I accept the Landlord’s evidence as to the amount of rent owed and award the $855.00 requested for the outstanding July 2015 rent.

As the Landlord has been successful in this application, I also award the recovery of the $50.00 filing fee, for a total of $**905.00.**

Both Tenants agreed that the security deposit of $427.50 could be applied to the outstanding rent. Accordingly, and pursuant to sections 38, 63, and 67, I Order that the Landlord is permitted to retain the $427.50 in partial payment satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **$477.50**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants failed to pay rent and did not file in time to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

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: July 17, 2015

Residential Tenancy Branch