



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, ET, FF

Introduction

This hearing dealt with three separate applications. The landlord applied for an order of possession and monetary order under two applications for dispute resolution, one of which was made by way of direct request. The direct request process is a non-participatory hearing and in a decision dated September 28, 2015, the matter was adjourned to be heard together with the landlord's other application. The sub-tenant applied for an order setting aside a notice to end this tenancy.

The lead tenant and the landlord both participated in the conference call hearing while the sub-tenant did not participate despite having been served with a copy of the landlords' applications, although she was not a named respondent in one.

The landlord (the owner of the property) and the lead tenant, participated in the conference call hearing. The sub-tenant JS did not participate in the conference call hearing. In this decision, I have referred to the lead tenant, BJ, and the sub-tenant, JS, by their initials for ease of reference.

At the hearing, the landlord asked to amend his claim to include a claim for loss of income for the month of November. BJ did not object to this amendment and as the tenant should reasonably have known that the landlord could not re-rent the unit while his sub-tenant was still residing therein, I allowed the amendment.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the lead tenant entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Is the lead tenant entitled to a monetary order despite not having filed an application for dispute resolution?

Background and Evidence

The relevant facts are not in dispute. The tenancy began on November 1, 2010 and rent was set at \$1,825.00 per month, payable in advance on the 31st day of each month. The rental unit is divided into 2 independent suites, both of which were rented by BJ under the same tenancy agreement. At some point during the tenancy, BJ began sub-letting the rental unit to JS who resided in the suite at the rear of the unit BJ occupied the suite in the front of the unit. On or about July 13, 2015, BJ gave the landlord notice that he was ending the tenancy for the entire property on August 15, 2015. BJ testified that he also gave notice to JS that his tenancy and therefore her tenancy were ending.

BJ paid \$862.50 in rent on or about August 1 and on August 15, vacated that part of the property in which he was residing. The parties agreed that JS did not vacate the rear suite. The landlord testified that someone had nailed a tarp on the roof which caused \$300.00 in damage and that he invoiced BJ for this amount and upon receiving BJ's rental payment, applied \$300.00 of that payment to the cost of the roof repair. BJ testified that he did not agree that he was responsible for the roof repair and did not authorize the landlord to apply part of his rent payment to that repair. The parties agreed that neither BJ nor JS paid rent for the period from August 15 up to the date of the hearing.

At the hearing, the parties agreed that the landlord was entitled to an order of possession for the entire rental unit.

In addition to the order of possession, the landlord seeks to recover rent for the period from August 15 – November 30 as he testified he has received no rental income for the property. The landlord anticipates that it will take some time to remove JS from the property as he expects that a bailiff will be required. Also, the landlord testified that there is significant damage to the rental unit and he expects it will take time to repair that damage prior to re-renting the unit.

The parties agreed that on September 1, another party moved their belongings into the front suite and occupied that suite shortly thereafter. The landlord testified that when his insurance company discovered that the rear suite had been sublet illegally and was occupied by a party who was not in a tenancy relationship with the landlord, they advised the landlord that his insurance coverage would be void unless he installed occupants in the front suite. The landlord testified that he arranged for friends to occupy the unit rent-free until such time as he was able to re-rent the unit and argued that but for BJ having illegally sublet the rear suite, he would not have had to arrange for this occupancy.

BJ argued that there was no proof that the landlord was not receiving rent for the front suite and that the landlord had authorized him to sublet the unit. The landlord denied having provided such authorization.

The landlord also seeks to recover the \$50.00 filing fee paid to bring his application.

Analysis

JS did not appear at the hearing in support of her application for an order setting aside a notice to end this tenancy. As she did not appear at the hearing and as the respondents appeared and were prepared to proceed, I dismiss her claim to set aside the notice to end tenancy without leave to reapply. Although JS named both the landlord and BJ as respondents, the landlord testified that he at no time authorized the unit to be sublet, nor did he accept JS as a tenant or accept rent from her. I find that JS and the landlord did not have a direct contractual relationship and I therefore find that the landlord was improperly named as a respondent. I find that BJ was properly named as a respondent as he is JS's landlord. During the hearing, BJ made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. JS must be served with the order of possession. Should JS fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

In support of the agreement of the parties, I grant the landlord an order of possession against BJ. I note that this order will be effective against BJ and anyone who occupies the suite under any authority he had previously given as when BJ's tenancy ended, so too did the tenancy of JS.

BJ purported to end his tenancy mid-month, on August 15. Section 45 of the Act provides that a notice takes effect the day before rent is due which means that any notice given on July 13 could not have taken effect until August 31 at the earliest.

Section 53 of the Act provides that where a party gives an incorrect effective date on a notice to end tenancy, that date is automatically changed to comply with the earliest effective date. I therefore find that section 53 of the Act operated to change the effective date of BJ's notice to August 31, 2015 and I find that BJ was obligated to pay rent for the entire month of August. As BJ did not agree that he was responsible for the roof repair and as he did not authorize the landlord to apply part of his rent payment to the repair, I find that all of the \$862.50 paid on August 1 must be applied to the rent. I find that BJ still owes \$962.50 in rent for August and I award the landlord that sum.

I find insufficient evidence to prove that the landlord authorized BJ to sublet the rental unit. I accept the landlord's argument that but for BJ's actions, his insurance coverage for the property would not have been threatened and that he was required to arrange for the unit to be occupied as a result. Although BJ claimed that the landlord could be collecting rent from the occupants as well as seeking recovery from BJ, I am inclined to believe the landlord that he has not required rent from these occupants as they are occupying the property for the sole purpose of ensuring his insurance coverage remains intact. I have no reason to doubt the truthfulness of the landlord's testimony, particularly since during the hearing he was very forthright and in one instance made an admission against his own interest. I find that the tenant must be held liable for the landlord's loss of income. I accept that given JS's behaviour, it is unlikely that she will

immediately vacate the unit upon being served with the order of possession and that bailiff involvement will likely be required. I find that the earliest the landlord may be able to re-rent the unit will be November 15 and I find it appropriate to grant the landlord loss of income for the full months of September and October and for half the month of November. Should the landlord suffer losses beyond November 15, he may bring another application. I award the landlord \$4,562.50.

As the landlord has been successful in his claim, I find he should recover the \$50.00 filing fee and I award him that sum for a total award of \$5,575.00. I grant the landlord a monetary order against BJ under section 67 for \$5,575.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

At the hearing, the parties urged me to grant BJ a monetary order for those months in which JS occupied the unit after BJ vacated. While I appreciate that granting such an order may simplify collection of debts from the parties who caused the losses, I do not have an application from BJ before me and absent such an application I cannot grant him an order, however fair it may be. BJ is free to pursue JS for his losses through an application for dispute resolution.

Conclusion

JS's application is dismissed and BJ is granted an order of possession. The landlord is also granted an order of possession and a monetary order for \$5,575.00.

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: October 28, 2015

Residential Tenancy Branch

