Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC, FF

Introduction

The applicants as landlords seek an order of possession pursuant to a one month Notice to End Tenancy dated August 1st, 2015. The Notice alleges that the rental unit must be vacated in order to comply with a government order. The applicants also seek a monetary award for unpaid rent, the cost of repairing three windows and a patio door as well as for recovery of "nuisance abatement" and related fees and a fire service fee charged by the local government to the applicant Ms. S.B. as registered owner of the property.

Ms. N.D. attended the hearing as a spokesperson for the respondents.

All parties but for the respondents Mr. D.W. and Mr. S.R. attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

No issue was raised by any of the participants regarding service of the application and notice of hearing or regarding receipt of any of the documentary evidence adduced.

Preliminary Issue

The matter of the use of this property is presently before the Supreme Court of B.C.. An order has been granted, dated July 30, 2015, by the Honourable Mr. Justice Grauer (Vancouver Registry No. S-152101), declaring that the registered owner, the applicant Ms. S.B., is in contravention of local government building, zoning, business licensing and fire service bylaws and prohibiting her from using, allowing or permitting the house or accessory building on the property as a "lodging house." The Order requires Ms. S.B. to reduce the occupancy of the dwelling house on the property and vacate the accessory building by September 30, 2015.

The decision forming the basis of that Order has been appealed (Court of Appeal No. CA 43023).

Section 58(2)(c) of the *Residential Tenancy Act* (the "*Act*") provides that the director appointed under the *Act* (or an arbitrator acting under her authority) must determine disputes such as this one unless the dispute is linked substantially to a matter that is before the Supreme Court.

From the material provided, it would appear that the matter before the Supreme Court concerns the use of the property by its registered owner or those persons she has permitted on it. The matters raised by this application are concerning the recovery or delivery of land and a claim for debt and damages.

I am satisfied that this dispute is not linked substantially to the matter before the courts.

Issue(s) to be Decided

Who is the landlord? Who are the tenants? Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlords are entitled to an order of possession pursuant to the Notice? Does it show that the respondents or any of them are liable for any part of the monetary award sought?

Background and Evidence

The rental unit, described in the application as "MAIN," is a five or six bedroom house located on a residential lot. There is another building on the property, described as a "cottage" or "garage" that was being occupied by the respondent Mr. D.W. He has apparently vacated that building.

The applicants presented a written tenancy agreement dated April 21, 2014, listing the landlord as the applicant Mr. M.I. and the tenants to be the respondents Mr. S.R., Mr. G.P and Mr. W.P.

The agreement describes the rental unit as the "whole house." It shows the monthly rent to be $3000.00, due on the first of each month, in advance. The tenancy agreement calls for a $1500.00 security deposit "arranged to be paid later."

Ms. N.D. indicated that she attended the hearing to speak for Messrs. G.P. and W. P., who were present, and for her boyfriend, the respondent Mr. S.R., who could not attend the hearing. Ms. N.D. indicated that she did not seek an adjournment to permit Mr. S.R. to attend.

The one month Notice in question, concerns the rental unit described as "WHOLE HOUSE" and is addressed to the respondents Messrs. G.P. and W. P. and Mr. S.R. Mr. S.R. appears to have acknowledged delivery of the Notice on August 11th with his signature. The respondent Mr. D.W. is not listed as a tenant in that Notice.

The applicant landlords filed as evidence a second one month Notice. It is dated August 11th, 2015 and is stated to concern the rental unit described as "Cottage" at the same residential address. This Notice is addressed to Mr. D.W. alone as the tenant. It appears that Mr. D.W. acknowledged delivery of the document on August 11th by signing it as having been received. As stated, Mr. D.W. has vacated the cottage/garage.

None of the tenants have applied to dispute the Notice regarding the main house.

Ms. N.D. describes herself as "homeless." She testifies that though she does not reside at the premises, she has spent a lot of time there. She says that indeed three windows and a patio door required repair in the main house. She agreed that the landlords' estimate for repair is reasonable at $750.00 for the windows and $1000.00 for the patio door.

Ms. N.D. says that the local government charges, a total of $20,655.78, are "mostly" the result of the actions of a woman named "M" who moved in during the last summer and who is still residing there. Ms. N.D. says that M has addiction issues, multiple sclerosis and is disabled. She says M was in the habit of calling the police or the fire department at times she felt in distress.

Ms. N.D. says that M was brought to the premises by the landlord Mr. M.I., that she signed an "Intent to Rent" form with the welfare office to have her rent paid directly to the landlord.

The applicant owner Ms. S.B. acknowledges that she receives M's rent direct from the welfare office.

The respondent Mr. W.P. testifies that he has only just seen the one month Notice to End Tenancy and that he's paid his rent this month. He says that the landlord Mr. M.I. rents the premises room by room and signs separate tenancy agreements for each room. He says there are five bedrooms in the house. None of them have locks on their doors. He thinks that people find out about the accommodation through the "grapevine" namely, by word on the street.

The applicant landlord Mr. M.I. testifies that the tenant Mr. S.R. in charge of the house and who occupies it. He denies having separate agreements with each occupant.

The applicant landlord Ms. S.B. testified that recent tenants in the house, a couple named S and D, rented from the respondent Mr. S.R.

The respondent Mr. G.P. did not give evidence.

Analysis

The written tenancy agreement is the best evidence of who is and who is not the landlord or the tenant. Based on the evidence presented, I find that the landlord of the house is the applicant Mr. M.I.. The applicant Ms. S.B. is the registered owner but she is not a party to the tenancy agreement.

I find that the tenants of the house are the respondents Mr. G.P. and Mr. S.R.. The respondent Mr. W.P. though named as a tenant in the tenancy agreement, did not sign it. While he has occupied the premises and contributed to rent, perhaps even paying money directly to the landlord, he is not a party to the tenancy agreement.

I find that the cottage/garage is a rental unit separate from the "MAIN" or "Whole House" and is not a rental unit the subject of this application. The landlord is free to make application against Mr. D.W. (who did not attend this hearing) for unpaid rent or other relief relating to that rental unit and I grant him any leave required to do so.

The tenants Mr. G.P. and Mr. S.R. rented the whole house and not merely bedrooms in an accommodation sharing or "rooming house" arrangement. This determination is corroborated by the fact that the bedroom doors had no locks; separate bedroom door locks are a strong indicator of a rooming house relationship.

As tenants of the house, with the enforceable right to exclusive possession of it, Mr. G.P. and Mr. S.R. were free to determine who would or would not reside there. If a new "tenant" or occupant was presented to them by Mr. M.I. it was their option to permit that person to take occupancy.

The fact that arrangements may have been made to have newcomers pay rent direct to Mr. M.I. did not, in my view, alter the essential contractual relationship of landlord and tenant that existed between Mr. M.I. and the tenants Mr. G.P. and Mr. S.R. It was no doubt a matter of convenience for the tenants, who were responsible to the landlord for the full $3000.00 per month rent and could avoid the trouble of individual collection from roommates. It was also convenient for the landlord, who would receive timely payment of at least a portion of each month's rent from a government source.

I find that this tenancy ended on September 30, 2015 as result of the one month Notice served August 11^{h}. Section 47(5) of the *Act* states that a tenant who fails to apply to cancel such a Notice within the permitted time is conclusively deemed to have accepted the end of the tenancy.

Though the tenant Mr. W.P. denies being served with the Notice, he was not a party to the tenancy agreement and was not required to be served with the Notice. In any event, under s. 88 of the *Act*, service on an adult person residing at the premises is effective service on a tenant. Service of the Notice on Mr. S.R. would have been effective service on Mr. W.P.

The landlord Mr. M.I. will have an order of possession against his tenants Mr. G.P. and Mr. S.R. and any person claiming possession or occupation of the premises under them.

In regard to the claim against Mr. D.W. for rent, Mr. D.W. it is dismissed on the terms outlined above.

The claim for repair to three windows and the patio door is not disputed. I grant the landlord Mr. M.I. a monetary award in the amount of $1750.00, as claimed.

The applicants have presented eighteen invoices from the local government for “nuisance abatement” fees, “administration” fees, “technology administration” fees and tax. All eighteen invoices state,

> The fees and costs arise out of calls for service and attendance at the above noted property by RCMP and are imposed under Nuisance By-Law No. 12883

Each of the eighteen invoices cites a separate incident date spanning the period March 18, 2015 to July 5, 2015.

On the evidence before me I am satisfied that the charges indicated by the invoices were the result of the actions of a person or persons permitted into the rental unit by the tenants. The actions of such persons and the consequences of those actions are the responsibility of the tenants in this case.

The invoices are addressed to Ms. S.B. as registered owner. I am satisfied that they are a proper charge to be advanced by the landlord Mr. S.I. against the tenants as he is legally responsible to her for loss she might suffer as a result of the actions of his tenants.

I allow the landlord Mr. M.I.’s claim for recovery of the local government charges, a total of $20,454.30, as presented.

The applicants advanced an additional charge of $201.48, relating to “fire service.” No evidence was given regarding such a charge and so I dismiss it.

The landlord Mr. M.I. is entitled to a monetary award totalling $22,204.30. The amount claimed in the application is a lesser sum; $20,655.78. However, the itemization of the claim on the document attached to the application makes it clear that the total claim exceeds the stated amount. In these circumstances an amendment to the claim is not required. Had it been required, I would have amended the landlord’s claim accordingly.

There remains a dispute about whether or not the landlord has received security deposit money. The landlord says there is none. Ms. N.D. and Mr. W.P. indicate otherwise.

That issue was not fairly raised by the application and so, while no account will be taken of any deposit money in reduction of the amount awarded, the respondent tenants are free to apply to have the question of deposit money determined and offset against the award.

Conclusion

The landlord Mr. M.I.'s claim is allowed. He will have an order of possession against his tenants Mr. G.P. and Mr. S.R. and anyone claiming possession or occupation under them. He will have a monetary order against the tenants Mr. G.P. and Mr. S.R. jointly and severally in the amount of $22,204.30 plus the $100.00 filing fee, for a total of $22,304.30

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 30, 2015

Residential Tenancy Branch