



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLBALT HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, AAT, LAT, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”). The Tenant also applied for: monetary compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); to allow access to the rental unit for guests; to authorise the Tenant to change the locks on the rental unit; and, to allow the Tenant to reduce rent for repairs, service or facilities agreed upon but not provided.

An agent for the Landlord (the “Landlord”) and Tenant appeared for the hearing. The Tenant called a witness during the hearing. All the participants provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the evidence provided.

Preliminary Issues

The Landlord confirmed receipt of the Tenant’s Application and evidence prior to the hearing by personal service. However, the Tenant denied receipt of the Landlord’s evidence. Therefore, I turned my mind to the service of evidence by the Landlord.

The Landlord testified that he had served a copy of his documentary evidence to the Tenant’s address which was detailed on the Tenant’s Application and differed to that of the rental unit address. This was done by registered mail on October 30, 2015. The Landlord provided a copy of the registered mail tracking number into evidence as well as the tracking history for the evidence. The document shows that the evidence was sent to the address provided by the Tenant on his Application and that an attempt had been made to deliver it. However, the item was put on hold at the recipient’s request.

The Tenant confirmed the address the Landlord had used as his service address but denied getting the evidence and demanded that he be served with a copy of it.

In making a decision on the service of the Landlord's evidence, I found the Tenant's oral evidence that he did not receive it from the Landlord was contradicted by the independent evidence provided by the Landlord from Canada Post; this showed that the Landlord complied with Section 88(c) of the Act in serving his evidence. In addition, I accept the evidence that the Tenant failed to accept the documents by placing a hold on them as indicated by the Canada Post tracking history report provided for this hearing by the Landlord.

Furthermore, I find that a Tenant cannot avoid service by failing or neglecting to pick up mail. Therefore, I informed the parties that I would be moving ahead with the hearing and not granting an adjournment for the Tenant to be served with a copy of the Landlord's evidence as the Landlord had complied with the requirements of service to the Tenant. However, I note that I did not rely on the Landlord's documentary evidence provided for this hearing to make findings in my decision. Therefore, the Tenant was not disadvantaged by not having the Landlord's documentary evidence.

At the start of the hearing, the Landlord requested an Order of Possession for the rental unit because the Tenant had failed to pay rent and had no authority to withhold rental payments.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to monetary compensation and a reduction in rent?
- Is the Tenant to be given access to the rental unit and allowed to change the locks?

Background & Evidence

The Landlord testified that he provided the Tenant stay at the hotel room for a period from July 21, 2015 to the end of July 2015. The Landlord testified that the room was not provided as a rental as no security deposit was requested. The Tenant paid \$350.00 in the form a cheque to stay in the room for this period. However, the cheque the Tenant had provided from a government ministry bounced and the rent amount for this period was not paid and was withdrawn by the Tenant.

The Landlord testified that on August 1, 2015, the Tenant and the manager of the hotel agreed that they would enter into a new tenancy starting August 1, 2015 on a month to month basis. The unpaid rent for July 21, 2015 to the end of July 2015 was forgiven. Rent in the amount \$450.00 was established for the new tenancy payable on the first day of each month based on single occupancy of the room. The Landlord stated that a security deposit was requested from the Tenant but none was paid. No written tenancy agreement was completed but the Tenant paid \$450.00 rent for August 2015. The Tenant did not dispute these details provided by the Landlord.

The Landlord testified that for the August 2015 period it came to his attention that the Tenant had been incarcerated and he did not return to the rental unit until August 25, 2015. During the time, the Landlord testified that the hotel manager noticed the Tenant's common law wife was residing in the rental unit while the Tenant was incarcerated.

The Landlord testified that when the Tenant returned he requested payment of rent from him in the amount of \$700.00 because the Tenant was now living with another occupant and the rental amount was \$700.00 for double occupancy. The Landlord testified that the Tenant failed to pay rent for September, October and November 2015.

As a result, the Landlord personally served the Tenant with a Notice on September 2, 2015 in the amount of \$700.00 and another one on October 2, 2015 for the amount of \$1,600.00; the second Notice was provided into evidence by the Tenant and shows a vacancy date of October 16, 2015.

The Tenant confirmed receipt of both Notices. The Tenant testified that the rent amount for this tenancy was \$450.00 and not \$700.00 as documented on the Notices. This was because he did not have his wife residing with him in the rental unit and that she stayed at the rental unit only as a guest. The Tenant stated that his wife had a tenancy agreement showing that she was renting elsewhere in another hotel.

When the Tenant was asked whether he had made any of the rent payments testified to by the Landlord, he stated that he had made attempts to pay rent in the amount of \$450.00 to the Landlord for September and October 2015 but the hotel manager would not accept rent as they wanted \$700.00. The Tenant explained that he did not pay rent for November 2015 as he was waiting for the outcome of this hearing.

The Landlord's agent denied that the Tenant made any attempts to make even a partial payment of rent. The Landlord stated that had the Tenant done so the hotel manager would not have refused it even though this was not the full amount that was payable

under the tenancy. The Landlord's agent submitted that the Tenant had no authority to withhold rent for the reason that he was awaiting the outcome of this hearing.

In relation to the remainder of the Tenant's Application, the Tenant testified that he was not incarcerated but he had a court order (not related to residential tenancy) not to go back to the rental unit. The Tenant testified that during this time he was involved in a Supreme Court hearing in which the hotel manager testified that the Tenant was not residing at the rental unit. The Tenant submitted that because of this fraudulent lie the Tenant was prevented by the courts from returning to the rental unit until August 25, 2015. Therefore, the Tenant now seeks to recover 21 days of rent because the hotel manager interfered with the return of the Tenant to the rental unit.

The Tenant alleged that during his time in August 2015 that he was away, the hotel manager entered his rental unit and stole his personal property. The Tenant provided a list of the missing property and their respective value for recovery from the Landlord. The Tenant also alleged that the Landlord had removed furniture provided to him at the start of the tenancy and had replaced this with other furniture. The Tenant testified that there was no sign of a break in and therefore, this entry and theft of his property could only be done by the hotel manager who had access to his rental unit during the time he was away.

The Tenant confirmed that while he was away he had a key to the rental unit and that his common law wife stayed at his rental unit as a guest. The Tenant testified that when he returned to the rental unit there was drug paraphernalia in the rental unit which suggested that the rental unit was being used by other people. The Tenant testified that during the previous week to this hearing, the hotel manager had entered his hotel room without proper written notice with a cleaning crew. The Tenant also testified that during the time the Tenant was away in August 2015, the hotel manager prevented access to the Tenant's guests to the hotel and this constituted harassment for which he wanted monetary compensation for.

The Tenant called his wife as a witness to the hearing and he asked questions of her during the hearing. The witness confirmed the Tenant's testimony that she had resided in the rental unit but only as a guest as she had a tenancy agreement elsewhere. The witness confirmed that some of the items stolen also belonged to her. The Tenant confirmed that she did not reside in the rental unit during the period of August 2015 until the Tenant returned on August 25, 2015.

The Landlord did not cross examine the witness but denied all the allegations that the Tenant's personal property was taken from the rental unit and that furniture provided to

the Tenant as part of the rental room was removed and replaced. The Landlord stated that they run a respectable hotel and are not in the business of entering rental units and going through people's belongings. The Landlord testified that the Tenant's wife was residing in the rental unit at the time the hotel manager was enquiring about unpaid rent.

The Landlord's agent denied preventing access to the Tenant's guests to the hotel stating that access to the hotel is through a magnetised door which avoids any physical confrontations with people entering the hotel. The Landlord stated that they do stop and ask people questions about their reasoning for being at the location but no entry to guests has been stopped or refused.

Analysis

The Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the Landlord and Tenant engaged into a month to month tenancy which started on August 1, 2015. I find the undisputed evidence of the parties is that the rent was established at the start of the tenancy in the amount of \$450.00 payable on the first day of each month.

However, the parties disagreed with each other on whether the rent amount increased to \$700.00 during the tenancy based on the allegation that the Tenant had another person living with him. To make findings in this respect, I turn to Section 14 of the Act. This states that a party may not make a unilateral change to a tenancy agreement unless the parties agree.

I find the Landlord has failed to provide sufficient evidence before me that the Tenant had another party living with him in the rental unit that would warrant the rent increase of \$700.00. The Landlord had remedies under the Act to deal with an unreasonable amount occupants or other cause which do not include unilaterally increasing the rent. Therefore, I find the rent payable for this tenancy agreement is \$450.00 per month.

Section 26 of the Act requires a tenant to pay rent whether or not the landlord complies with the Act unless the Tenant has a right to deduct or withhold rent. I accept the undisputed evidence that the Tenant was served with two Notices, one relating to

September 2015 rent and one for October 2015 rent. I find the one provided by the Tenant into evidence complies with Section 52 of the Act. As I have determined the rent payable for this tenancy is \$450.00 per month, I find the amount of rent payable on the Notices is incorrect. However, an incorrect amount on a Notice does not invalidate it.

In relation to the Tenant's claim to cancel the Notices, I find the Tenant provided insufficient evidence that he made attempts to pay \$450.00 for the months of September and October 2015 rent as this was not supported by any corroborating evidence. If the Landlord had indeed denied payment of rent, the Tenant would need to prove that there was a refusal to accept his payment and that the Tenant took other steps, such as registered mailing a cheque to the Landlord or providing evidence of payment attempts with witnesses. The Landlord disputed the Tenant's oral evidence that he made attempts to pay rent. Therefore, I am only able to conclude that the Tenant failed to pay rent for these two months in the amount of \$450.00.

Furthermore, I find the Tenant failed to pay rent for November 2015 because he was awaiting the outcome of the hearing. In this respect, I find that the Tenant had no authority under the Act to not pay rent for this reason. Therefore, the Tenant's Application to cancel the Notices is dismissed.

Section 55(1) of the Act provides that if a tenant makes an Application to dispute a Notice, the Arbitrator must grant the landlord an Order of Possession if at the time of the hearing the Landlord makes an oral request and the tenant's Application is dismissed. Therefore, as the Landlord made an oral request, I grant the Landlord an Order of Possession effective two days after service on the Tenant as the vacancy date on the Notice has now passed. The Landlord must serve the Tenant with a copy of the order which may then be enforced through the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

As the tenancy is now ending the Tenant's Application to allow access to guests to the rental unit and to change the locks on the rental unit are now moot issues. Therefore, these two issues on the Tenant's Application are hereby dismissed.

The Tenant claimed that he is owed a reduction in August 2015 rent because the hotel manager lied at a Supreme Court hearing which prevented the Tenant from returning to the rental unit for 21 days. In this respect, I find the Tenant failed to provide sufficient information regarding the nature of the Supreme Court proceedings and what was exactly testified to by the hotel manager. Furthermore, I find the Tenant failed to show that the hotel manager's alleged testimony at those proceedings was the sole reason

why the Tenant was prevented from returning to the rental unit. Therefore, I dismiss the Tenant's Application for August 2015 rent reduction.

In relation to the Tenant's Application for monetary compensation I make the following findings. When a party makes a claim for monetary compensation for damage or loss under the Act, the burden of proof is on the applicant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the applicant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

After carefully considering the disputed evidence of the Tenant in respect to the allegation that the Landlord entered the rental unit and stole the Tenant's and the Tenant's wife's personal belongings, I find the Tenant has failed to provide sufficient evidence to prove this.

I find that because the witness was related to the Tenant, her evidence was not independent and impartial. Therefore, I place little evidentiary value on her testimony. I find that the Tenant failed to provide any direct evidence, such as video or independent witness evidence, that an agent of the Landlord entered the rental suite and removed the Tenant's personal property and the furniture within. Therefore, I find this claim results in an unproven allegation. Furthermore, the Tenant failed to provide any evidence to verify the costs that were being claimed for the alleged stolen property.

In the same respect, I also find that the Tenant provide insufficient evidence that the Landlord had blocked access to the Tenant's guests during August 2015; this is because the Tenant claims that both him and the witness were away during this period; therefore, they would not have witnessed any denial of access to guests by the hotel manager. As a result, the Tenant would have been required to provide sufficient proof of when his guests were denied access and how often, which I find the Tenant failed to do. Therefore, I find that his oral testimony is not sufficient to prove this allegation.

The Tenant also claimed monetary compensation for harassment by the Landlord and that he lost peaceful and quiet enjoyment of the rental unit. Policy Guideline 6 to the Act on the right to quiet enjoyment defines harassment as a course of vexatious comment or conduct that is known or is ought reasonably to be known to be unwelcome. In this case, I find that the Tenant has failed to prove that the Landlord or the hotel manager engaged in course of action that was vexatious, or that the hotel manager made entry into the rental unit without giving proper notice, or that the hotel manager refused entry

to the Tenant's guests. In relation to the Tenant's claim for loss of quiet enjoyment, I am only able to conclude that the evidence before me results in one party's word against the others and I find that the Tenant's evidence is no more compelling than the Landlord's evidence which disputes the Tenant's allegations. Based on the foregoing, I find the Tenant has failed to meet the burden of proving the monetary claim against the Landlord which I hereby dismiss.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application in its entirety. The Landlord is issued with an Order of Possession to end the tenancy.

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: November 11, 2015

Residential Tenancy Branch

