



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB MNSD MNDC O

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on November 20, 2015. The Landlord filed seeking an Order of Possession and a \$695.00 Monetary Order for: money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep the security deposit; and for other reasons.

The hearing was conducted via teleconference and was attended by 4 Agents for the Landlord, the Tenant, and the Tenant's Assistant. Each person gave affirmed testimony. The Tenant's Assistant (hereinafter referred to as the Assistant) submitted hearsay evidence on behalf of the Tenant, some of which was responded to or clarified by the Tenant during the hearing.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. Based on the above, I find all 4 Agents met the definition as a landlord. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On November 20, 2015 the Landlord submitted 13 pages of evidence to the Residential Tenancy Branch (RTB). The Landlord affirmed that they served the Tenant with copies of the same documents that they had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's submission as evidence for these proceedings.

No documentary evidence had been submitted to the RTB on behalf of the Tenant.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord met the burden of proof to be granted monetary compensation?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement which provided that the Tenant entered into a fixed term tenancy agreement for a unit number that began with the number 2, either 205 or 203. The tenancy was for a fixed term that began on October 1, 2014 and ended on September 30, 2015 at which time the Tenant was required to vacate the rental unit. As per the tenancy agreement rent of \$695.00 was payable on the first of each month. On January 15, 2015 the Tenant paid \$262.50 towards the security deposit and was required to pay the balance of \$85.00 before October 1, 2014 for a total of \$347.50.

The tenancy agreement was altered crossing out the unit number and replacing it with number 406. The Landlord submitted that the Tenant requested to change rental units a few months into the tenancy. The Landlord and Tenant both initialed the tenancy agreement change; continuing the fixed term tenancy agreement for the new rental unit.

The parties attended dispute resolution on October 29, 2015 regarding the Tenant's application to cancel a notice to end tenancy for cause. The Arbitrator issued her Decision on October 29, 2015 and found that a notice to end tenancy had not been issued to the Tenant.

From the October 29, 2015 Decision submitted into evidence the Arbitrator concluded as follows:

*The Tenants' Application is dismissed **without leave to re-apply.***

The tenancy ended on September 30, 2015; however, the Tenant has use and occupancy of the rental unit until October 31, 2015

[Reproduced as written]

The Landlord testified that the Tenant continues to over hold the rental unit and refuses to vacate. The Landlord stated that monthly payments have been made on behalf of the Tenant by the Ministry of Social Development and have been received for "use and occupancy only". Receipts have been issued each month and delivered to the Tenant by the Landlord's cleaner. The Landlord now seeks an Order of Possession effective January 31, 2016.

The Landlords testified that they are seeking a monetary order to cover the costs of cleaning the rental unit and the unpaid arrears. The Landlord stated that during the

tenancy the Tenant accumulated a balance of unpaid rent. The Landlord stated they entered into a repayment plan with the Tenant and as a result the Ministry of Social Development began paying \$770.00 each month which was comprised of the \$695.00 rent or use and occupancy plus \$75.00 that was put towards the arrears. The Landlords asserted there was still a balance owed of \$310.00 for the outstanding arrears for which they are seeking a Monetary Order.

The Assistant testified that the Tenant has not received a receipt for use and occupancy since October 2015. He argued that the receipts used to be taped to the Tenant's door and nothing has been taped to his door since October 2015.

The Assistant submitted the Tenant paid the security deposit of \$347.50 and a pet deposit of \$347.50 was also paid in 2014.

The Assistant argued that the Tenant has never been issued receipts or an accounting of the payments made towards the outstanding arrears. He requested that the Landlord email him copies of all of the receipts that show how the payments have been applied.

The Assistant stated they have filed a claim with the B.C. Human Rights Tribunal. He asserted that the Landlords' attempts to evict the Tenant are a breach of the Tenant's human rights. He argued that the Landlord's application for an Order of Possession should be stayed until the matter with the Human Rights Tribunal is finalized.

The Assistant stated the Landlord had numerous rental units in the city. He requested the Landlord consider allowing the Tenant to occupy a unit in a different building if he was not able to stay in his current unit.

The Landlords testified that receipts are never posted to a tenant's door. The only documents they tape to a door are notices of entry, notices to end tenancy, or other RTB paperwork. The Landlord stated that their cleaner, A.C., delivered the receipts marked "use and occupancy" to the Tenant in an envelope which she normally placed under his door.

The Cleaner was called into the hearing to provide affirmed testimony. She confirmed that she is tasked with delivering documents to tenants and the methods used for those deliveries. She testified that she assists the Landlord in folding the receipts and places them in envelopes prior to delivering them to tenants. She indicated that envelopes containing receipts are always placed under tenant's doors.

The Cleaner testified that she delivered receipts to the Tenant in November 2015, December 2015, and January 2016. She stated that in either November or December the Tenant was coming out of his apartment just as she was about to deliver the receipt so she personally handed it to the Tenant.

The Tenant and Assistant were given an opportunity to question the Cleaner; however, both declined.

The Tenant testified and confirmed that the cleaner had personally served him with a receipt in November 2015. He stated that he did not know what had happened to the other receipts that were placed under his door on his floor.

In closing, the Assistant requested that the Landlord email him copies of all of the receipts and the accounting of the payment arrears. As a result, I issued an oral Order that the Landlord email the Assistant the aforementioned documents and fax copies of the same documents to the RTB.

On January 18, 2016 at 11:45 a.m. a 7 page fax was received from the Landlord. The fax was comprised of a 1 page cover sheet; 4 receipts for October 2015 through to January 2016 stamped "...for use and occupancy only"; and a 2 page tenant payment ledger.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 84.1 of the *Act* provides for exclusive jurisdiction of residential tenancy matters as follows:

- 84.1** (1) The director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review under Division 2 of this Part and to make any order permitted to be made.
- (2) A decision or order of the director on a matter in respect of which the director has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

In response to the Assistant's request that this matter be stayed until the Human Rights Tribunal makes a ruling on their application the Residential Tenancy Branch has exclusive jurisdiction of this matter, pursuant to section 84.1 of the *Act*. Therefore, the Landlord's application for an Order of Possession and Monetary Order is not restricted or bound by another tribunal such as the Human Rights Tribunal and will proceed as scheduled.

Section 55(2)(c) of the *Act* stipulates that a landlord may request an order of possession of a rental unit by making an application for dispute resolution if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

Residential Tenancy Policy Guideline 3 provides, in part, that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to

pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

I conclude that Policy Guideline 3 is relevant to this case as this tenancy ended September 30, 2015 after which the Landlord accepted payment for use and occupancy and not rent.

The parties attended dispute resolution on October 29, 2015 and a Decision was issued where the Arbitrator found the tenancy ended September 30, 2015 in accordance with the tenancy agreement. The Tenant was granted use and occupancy of the rental unit until October 31, 2015; however he failed to vacate the rental unit at that time.

Notwithstanding the contradictory testimony provided by the Assistant and the Tenant, I accept the Cleaner's affirmed testimony that the Tenant was issued receipts stamped "...for use and occupancy only" for each payment received for the three month period of November, December, and January 2016. In addition, I find the Landlords acted accordingly by allowing the Tenant to use and occupy the rental unit while waiting for their November 20, 2015 application for an Order of Possession to be heard.

Based on the above, I find the Landlord has met the burden of proof to be granted an Order of Possession effective January 31, 2016 at 1:00 p.m., in accordance with section 55(2)(c) of the Act.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The Landlord made application for a monetary order in the amount of \$695.00, an amount equal to one month's rent or use and occupation. The Landlord provided a statement in the Details of the Dispute section on the application describing the tenancy agreement; the October 29, 2015 hearing and Decision; and that rent was accepted for use and occupancy only. However, there was no description of what the \$695.00 was being claimed for and there was no monetary order worksheet provided in evidence. During the hearing the Landlords stated that their monetary claim was for cleaning the rental unit when the Tenant moved out and for the unpaid arrears.

I find that at the time the Landlord filed their application they had not suffered a loss for cleaning the rental unit. In addition, I accept the Assistant's undisputed submission that the Tenant had never been served a copy of the payment ledger showing the accumulation and payment of the arrears. As such I issued an oral Order for the Landlord to serve the Assistant and the RTB with copies of the receipts and tenant ledger.

Based on the above, I find that at the time the Landlord filed their application they had not suffered a loss for cleaning the rental unit. I further find that the Landlord did not include the full particulars of their monetary claim which prevented the Tenant from being able to prepare a response to the claim. Accordingly, I dismiss the Landlord's request for monetary compensation and to keep the security and pet deposits, with leave to reapply.

Conclusion

The Landlord has been granted an Order of Possession effective January 31, 2016 at 1:00 p.m. The Landlord's request for a Monetary Order and to keep the deposits has been dismissed, with leave to reapply.

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: January 19, 2016

Residential Tenancy Branch

