



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDC, FF

Introduction

This was a reconvened hearing with respect to the landlord's application for a monetary award and for an order for possession. This matter was originally set for hearing by conference call on December 22, 2015. It was adjourned to be reconvened for hearing on this date for the reasons stated in my December 22nd interim decision, namely: so the landlord could produce evidence of the particulars of the purchase and sale of the property and of her ownership of the rental unit and so that the tenant could submit documents to confirm the validity of a tenancy agreement with one of the former owners of the rental property and the payment of rent to that former owner.

The reconvened hearing was conducted by conference call. The landlord attended with her father. The tenant did not attend the hearing although they were given the time, date and call-in particulars with the December 22, 2015 interim decision.

On December 22, 2015, the landlord submitted documentary evidence concerning her purchase of the rental property. They were received at the Residential Tenancy Branch on December 22, 2015. The landlord provided proof that the same documents were mailed to the tenants on December 23, 2015. Canada Post records confirm that the tenant, S. J. received and signed for the documents on December 28, 2015. The tenants did not submit any documentary evidence as requested by my December 22nd interim decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

The rental property is a house in Cloverdale. The property was owned by two individuals. N.B. and J.G. According to the testimony of the landlord, the former owners did not agree as to a sale of the property. The landlord submitted a copy of an entered order pronounced by the Supreme Court of British Columbia on July 31, 2015. The order granted sole conduct of the sale of the rental property to N.B.

The landlord submitted a copy letter dated August 12, 2015, from the solicitor for the former owner J.G. to the lawyer for the co-owner, N.B. In the letter the lawyer said in part that:

As you are aware, there are tenants who occupy the property and our client informs us that these tenants will be given one month's notice forthwith and will be moving out of the property on or before September 15, 2015.

The contract of purchase and sale of the rental property was completed on September 8, 2015. The landlord provided copies of the sale documents and a copy of the transfer of title showing that the applicant and her sister are the registered owners of the rental property as of September 8, 2015.

The landlord testified that the rental unit was supposed to be vacant and the landlord was to have possession of the property upon completion. The landlord has attempted to communicate with the occupants of the rental property since September 8th. She has told the respondent that she is the new owner of the property, but the tenants occupying the property have refused to speak to her, even after the police were involved.

At the hearing on December 22, 2015 the tenant S.J. testified that he had a tenancy agreement with the former owner. He claimed to have no knowledge of the sale of the property and said that he has paid rent to his landlord J.G. each month since the tenancy began on April 15, 2015. The tenant submitted as evidence a copy of a tenancy agreement. The agreement was for a tenancy at the rental property commencing April 15, 2015 for a one year term, with rent in the amount of \$1,500.00 payable on the first of each month.

When the tenant refused to communicate with the landlord and refused to provide any details of an alleged tenancy agreement. She served the tenants with a Notice to End Tenancy for unpaid rent. The Notice to End Tenancy was dated September 8, 2015 and was posted to the door of the rental unit on September 8th. The landlord claimed that the tenant failed to pay rent in the amount of \$2,000.00 that was due on September 8th. The landlord said that the amount stated in the Notice to End Tenancy was based on the market rent for the unit. Until the December 22, hearing the landlord was

unaware of the terms of a supposed tenancy agreement between the respondents and J.J. According to the landlord, J.G., the former owner of the property is hostile and bears ill will towards the landlord and her father and will not speak to them.

At the hearing on December 22, 2015 the tenant claimed to have paid rent to the former owner each and every month to and including December. The tenant did not apply to dispute the 10 day Notice to End Tenancy. The hearing was adjourned to allow the landlord and the tenant to submit documentary evidence. The landlord supplied the requested evidence the same day. The tenant did not respond to the request. He acknowledged receipt of the landlord's evidence on December 29, 2015, but he did not submit proof of any rent payments and he did not submit any statement or other evidence to show that rent was paid to anyone for any period before or after September, 2015.

Analysis

The landlord purchased the rental property with her sister as joint tenants. The sale completed on September 8, 2015. The landlord expected to have vacant possession upon completion, but found the house was occupied by the respondents who claimed to be tenants. The landlord's efforts to communicate with the tenants have been rebuffed. The tenants have paid no rent to the landlord. The tenant did not attend the reconvened hearing; he was told at the original hearing that he should provide documents to support his claims to have paid rent. The tenant did not submit any additional documents and he did not attend the reconvened hearing.

I accept the landlord's evidence that the tenants were served with a 10 day Notice to End Tenancy dated September 8, 2015. The tenants did not apply to cancel the Notice to End Tenancy and I accept the landlord's testimony that the tenants have paid no rent since she became the owner of the rental unit. The Notice to End Tenancy may have misstated the amount of rent payable as of the date of the Notice to End Tenancy, but I find that rent was due and unpaid and if the tenants disagreed with the Notice to End Tenancy they were obliged to file an application for dispute resolution within five days of receiving the Notice if they disagreed with it. Having failed to pay any rent or to apply to dispute the Notice to End Tenancy, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

I find that there is an undetermined amount of rent that is outstanding to the landlord for the tenants' occupancy of the rental unit for the past four months. Assuming the tenancy agreement submitted by the tenant is authentic then the tenants are responsible for monthly rent of \$1,500.00 for each month of their occupancy. The

landlord has not claimed a monetary amount based on the tenancy agreement and I find that she has not provided evidence that is adequate to allow me to calculate the actual amount of rent that may be owed. I therefore find that the landlord's application for a monetary award for unpaid rent should be dismissed with leave to reapply.

Based on the tenants' failure to apply to dispute the Notice to End Tenancy although there is an unspecified amount of rent outstanding, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and 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.

Conclusion

The landlord has been granted an order for possession. The application for a monetary award is 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 08, 2016

Residential Tenancy Branch

