



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, & FF

Introduction

The Amended Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$23,839 for loss of rent and failure to pay utilities
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant on August 19, 2015. I find that the Application for Dispute Resolution/Notice of Hearing was on the respondents by mailing, by registered mail to the Tenants. I find the Amended Application for Dispute Resolution was served on the respondents by mailing, by registered mail.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The landlord produced a Lease Agreement for the rental unit that identified TCC as the tenant. It was signed by LW with the notation under his name as "General Manager." The Lease Agreement provided that the tenancy would start on June 1, 2015 and end on May 31, 2016. The rent was set at \$2300 per month. The respondents did not pay a security deposit.

The representative of TCC takes the position that TCC is not a tenant as LW did not have the authority to sign on behalf of TCC.

LW was hired by TCC as a general manager/Chief Financial officer. In late May he was living in Vancouver and he was looking for a home to move to in the area of his employment. Much of the negotiation was handled by RM. The landlord testified RM was an agent who appeared on behalf of TCC to facilitate this transaction. The representative of TCC disputes this. However, he admits that RM is a band member living in the area and has negotiated contracts relating to various projects on behalf of TCC in the past. The tenancy agreement was sent by the landlord to RM and the signed copy of the tenancy agreement was returned by RM to the landlord with copies given to the representative of TCC.

LW lived in the rental unit until January 3, 2016. The payment of the rent was split between LW and TCC. However, LW testified that TCC paid the rent to the landlord in the form of direct deposit.

The landlord produced a copy of an e-mail dated May 14 to LW and RM which enclosed a copy of the proposed lease. There is an exchange of e-mails discussing whose name should be on the lease. The e-mail from the landlord states that TCC is named because she does not lease to individuals.

In an e-mail dated May 22 LM advises RM and copies the landlord stating he will be starting on June 1 and stating he would let RM respond re: signing of the lease.

On May 25 LW e-mailed the landlord stating he met with RM today and signed the lease as GM and CGO of TCC dated June 1, 2015.

On May 29 LW e-mailed the landlord and copied RM and CD (the representative of TCC at hearing) asking when the landlord could receive the signed lease contract and two months payments.

On May 29 RM sent an e-mail to the landlord with a copy to CD (the representative of TCC) where the lease was scanned and sent to the landlord with a notation the original is being mailed up to the TCC office for filing.

On June 15 LW sent an e-mail to the landlord stating he has been advised by TCC executive that since his employment agreement provided for a 90 probationary period he was not authorized to sign contracts extending beyond August 31, 2015. He proposed that the parties sign a new contract which provided that the Lease would end on August 31, 2015. The landlord responded saying the Lease Agreement is valid as it was signed in good faith and that TCC interpretation of his employment contract is not relevant to the lease agreement as he signed as the TCC General Manager and CEO.

On July 31 LW gave written notice he was vacating at the end of August.

The parties subsequently agreed to several extensions. The e-mails from LM indicate he was acting as General Manager and Chief Financial Officer.

The tenant vacated the rental unit on January 3, 2016. The landlord was not able to rent the rental unit and lost rent in the sum of \$2300 for January 2016. The landlord has re-rented the rental unit with the new tenants taking possession on February 1, 2016.

Analysis:

The representative of TCC testified that TCC is not liable as LW did not have the authority to act on behalf of the TCC. He testified that a contract such as this requires that he or the executive sign on behalf of TCC. After carefully considering all of the evidence I determined that TCC is bound by the terms of the tenancy agreement on the basis of the apparent authority given by TCC to RM and LW for the following reasons:

- TCC failed to produce any documents that corroborated the testimony of the representative of TCC that LW did not have authority to sign on behalf of TCC.
- LW was hired on behalf of TCC to act as a General Manager and Chief Financial Officer. This type of contract (a lease of one year) is the type of contract one would expect that a general manager would have the authority to enter into.
- TCC took the position that LW did not have the authority to sign contracts beyond 90 days because his employment contract had a 90 probationary period. This limitation was never told to the landlord prior to the signing of the tenancy agreement.
- In May 2015 TCC was asked RM (a band member) to assist them finding a rental unit for their new hire LM. TCC used RM to help negotiate contracts on their behalf in the past.
- RM facilitated the leasing of the rental unit. The landlord's form of tenancy agreement was sent to RM at the request of LW and it was returned by RM to the landlord after it was signed with an email copy sent to the representative of TCC and the original sent to the offices of TCC for filing.
- TCC had previously permitted RM to negotiate contracts on their behalf. RM sent the signed copy of the Lease Agreement to the Landlord and copied TCC the representative of TCC at the same time in an e-mail sent on May 29.
- CD, the representative of TCC at the hearing did not object to the form of the Lease.

- Subsequent communications between LM and the landlord identify LM as the General Manager and Chief Financial Officer of TCC.
- CD, the representative of TCC at the hearing did not object to the various extensions that were granted.
- The rent was paid by TCC and LM using a bank transfer from the account of TCC.

I determined TCC allowed RM and LM to represent that LM had the authority to enter into the Tenancy Agreement on behalf of TCC. The representative of TCC was aware or should have been aware of that the Tenancy agreement had been signed by LM as an agent of TCC prior to June 1, 2015 and he failed to take steps to alert the landlord that LM did not have the authority (if such was the case). It was not until June 15, 2015 that the LM advised the landlord by e-mail that TCC took the position he did not have the authority to enter into the tenancy agreement.

In summary I determined that TCC is a party to the tenancy agreement on the basis of apparent authority. I also determined that LM is a tenant as he lived in the rental unit, paid a portion of the rent and was involved in the ending of the tenancy..

Where the parties enter into a fixed term tenancy agreement, the tenant is obligated to pay the rent for the entire fixed term of the tenancy agreement subject to a landlord's obligation to mitigate her loss. Section 45(2) of the Residential Tenancy Act provides as follows:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The obligation to mitigate is triggered once the tenant has vacated the rental unit. I find that the landlord properly mitigated her loss when she found a new tenant who took possession on February 1, 2016. I determined the tenants are responsible for the loss of rent for January 2016.

I do not accept the submission of the tenant that the landlord is precluded from making this claim on the basis of section 22 of the Residential Tenancy Act which provides as follows

Acceleration term prohibited

22 A tenancy agreement must not include a term that all or part of the rent payable for the remainder of the period of the tenancy agreement becomes due and payable if a term of the tenancy agreement is breached.

The landlord's claim is for loss of rent for January 2016 which has been proven. It is not based on an acceleration clause.

Monetary Order and Cost of Filing fee:

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$2300 for the loss of rent for January 2016.
- b. I determined the landlord is entitled to \$215.62 for half of the cost of the heating fuel cost for the month of January.
- c. I dismissed the landlord's claim of \$243 for lawyer's fee. This claim relates to the cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee.

In summary I ordered that the respondents pay to the applicant the sum of \$2515.62 plus the sum of \$100 in respect of the filing fee for a total of \$2615.62.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: February 15, 2016

Residential Tenancy Branch

