



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, FF; CNR, CNL, OLC, FF, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and landlord's use pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72; and
- an "other" remedy.

The landlord SR (the landlord) attended on behalf of both landlords. The tenant attended. The parties acknowledged service of the opposing parties' dispute resolution packages and evidence. The tenant acknowledged service of the 10 Day Notice and 2 Month Notice.

The request for the order that the landlords comply with the Act, regulation or tenancy agreement relates to the end to tenancy and temporary occupation of the garage. The tenant has not indicated what other relief he seeks in this application.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an order of possession? Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an order of possession? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant? Is the tenant entitled to order requiring the landlords to comply with the Act, regulation or tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlords' cross claim and my findings around each are set out below.

This tenancy began 15 August 2015. The parties entered into a written tenancy agreement on 12 August 2015. Monthly rent in the amount of \$850.00 is due on the first. The landlord continues to hold a security deposit in the amount of \$450.00, which was collected at the beginning of the tenancy.

The tenancy agreement indicates that the tenancy was a periodic tenancy on a month-to-month basis. The tenant testified that when he was entering into the tenancy agreement, his understanding was that the tenancy was on a long-term basis of two years at least. The tenant explained that he believed that this clause indicated that rent was due on a monthly basis.

In the second week of May the landlord's father resided temporarily in the garage on the residential property. The tenant testified that the garage is in the landlords' possession, but that the father was yelling profanity and alarming children who reside in the residential property.

In May 2016, the landlord's mother told the tenant that the rental unit was needed for the landlord's father. No written notice was issued at this time. The tenant testified that in May 2016 the landlord's mother told the tenant to pay an increased rent amount of \$1,250.00 effective 1 June 2016 or vacate the rental unit. The landlords deny that this occurred.

On 1 June 2016, the landlord attended at the rental unit. At that time, the tenant informed the landlord that he was looking for a rental unit, but had not located one. The landlord testified that the tenant agreed to pay \$400.00 towards rent for June, and that the landlords would recover the remaining amount from the security deposit. The landlord testified that the tenant had the full amount of rent of \$850.00, but only provided the landlord with \$400.00 of this amount. The landlord was under the impression that the tenant would be vacating by 1 July 2016. The landlord testified that the witness JS was not present when the tenant made the partial payment towards rent.

The tenant disagreed with the landlord's version of events. The tenant testified that his friend JS was sitting on a sofa just inside the door of the rental unit and witnessed this exchange. The tenant testified that he paid the full amount of rent (\$850.00) to the landlord's mother and the landlords asked for an additional \$400.00. The tenant testified that he told the landlords that he could not pay this amount.

The tenant provided a notarized statement from JS confirming the tenant's version of events. JS did not attend to provide sworn testimony or have his testimony tested by way of cross examination.

The landlord testified that on or about 5 June 2016, she received the tenant's application for dispute resolution. At this time the landlord consulted with the Residential Tenancy Branch and was informed that a verbal notice was not binding on the tenant.

On 7 June 2016, the landlord served the tenant with the 10 Day Notice and 2 Month Notice by posting those notices to the tenant's door. The 10 Day Notice set out an effective date of 17 June 2016 and the 2 Month Notice set out an effective date of 31 August 2016. The 10 Day Notice set out that the tenant had failed to pay rent in the amount of \$400.00 that was due 1 June 2016. The 2 Month Notice set out that it was given as the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The landlord testified that the tenant has not paid rent for July. The landlord testified that she did not attend at the rental unit to collect July's rent because of the deteriorating relationship between the parties. The landlord testified that the tenant has current rent arrears of \$1,250.00.

The landlord testified that the landlords' family urgently needs the rental unit for the landlord's father to reside in. There is a current order that prevents the landlord's father

from living with the landlords' family. The landlord testified that her father is currently staying with friends, but that this situation is not sustainable.

The tenant asks me to consider his personal circumstances in considering the validity of the 2 Month Notice. In particular, his need to find a basement suite within walking distance of his child's school.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, the tenant and landlords have mutually exclusive version of events: the tenant says that he paid his rent in full; the landlords say that the tenant did not pay his rent in full. There are no documents to corroborate either version of events. This requires that I make a finding of credibility.

The often cited test of credibility is set out in *Faryna v Chorny*, [1952] 2 DLR 354 (BCCA) at 357:

The real test of the truth of the story of a witness... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

On balance, I prefer the tenant's version of events. The amount on the 10 Day Notice (\$400.00) does not align with the landlords' version of events but does match with the tenant's version of events. In particular, the landlords say that the tenant paid \$400.00 towards rent—this would result in rent arrears of \$450.00. The tenant's version of events is that which accords with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable. On this basis, I find that there were no rent arrears as at 1 June 2016 and cancel the 10 Day Notice. The landlords are not entitled to an order of possession on the basis of the 10 Day Notice.

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

The landlords have provided uncontested evidence that they require the rental unit for the landlord's father to live in as he can no longer reside with the rest of the family. The

tenant has not brought the landlords' good faith into issue. On this basis, I find that the 2 Month Notice issued 7 June 2016 is valid. The landlords are entitled to an order of possession on this basis.

The next issue is the effective date of the 2 Month Notice. Pursuant to subsection 49(6) of the Act, if the tenancy is a periodic tenancy, the effective date of the notice will be 31 August 2016. If the tenancy is a fixed-term tenancy, the effective date of the notice can be no earlier than the end date for the tenancy.

The tenant submits that the tenancy agreement was a fixed-term tenancy for one year. The landlords dispute this. The written tenancy agreement indicates that the tenancy agreement is a periodic tenancy on a month-to-month basis. The tenant explained that he believed that this clause indicated that rent was due on a monthly basis.

The written tenancy agreement is unambiguous and indicates that the tenancy is periodic. The tenant has not provided sufficient evidence to show that the tenancy agreement was for a fixed-term tenancy of two years in spite of the written tenancy agreement. Accordingly, I find that tenancy is a periodic tenancy and the effective date of the 2 Month Notice is 31 August 2016. The landlords are entitled to an order of possession effective on this date.

The landlords apply for rent arrears in the amount of \$1,250.00: \$400.00 from June and \$850.00 from July. As set out above, I found that the tenant did not have rent arrears for June and that rent was paid in full. As such, the landlord is not entitled to recover the claimed \$400.00 amount. The tenant admitted that he did not pay rent due 1 July 2016 and that it remains unpaid as of this date. The tenant stated that he did not have any problem with paying this amount. On the basis of this evidence, I find that the landlords are entitled to the rent arrears for July in the amount of \$850.00.

In respect of the tenant's application for an order that the landlords comply with Act, regulation or tenancy agreement, it appears that the father is no longer occupying the garage area. Accordingly, there is no need to make any order in respect of that incident. Further, the landlords have since issued a valid notice to end tenancy. For this reason, there is no reason to make any order in respect of the communication regarding the end to tenancy as it has been ordered.

As the parties have each experienced some measure of success in these applications, I decline to award recovery of the filing fee for either party. The parties will bear their own costs of filing.

Conclusion

The landlords are provided with a formal copy of an order of possession effective 31 August 2016. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of \$500.00 under the following terms:

Item	Amount
Unpaid July Rent	\$850.00
Offset Security Deposit Amount	-450.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$500.00

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant's application to cancel the 10 Day Notice is granted. The remainder of the tenant's claim is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 05, 2016

Residential Tenancy Branch