



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 10656662 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LAT, OLC, O (Tenant's Application)
OPR, MNR, FF (Landlord's Application)

Introduction and Preliminary Matter

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed on June 20, 2016 the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 15, 2016 (the "Notice"). He also sought an Order authorizing him to change the locks on the rental unit as well as an Order compelling the Landlord to comply with the *Residential Tenancy Act*.

The Landlord sought an Order of Possession based on the Notice, monetary compensation for unpaid rent and to recover the filing fee.

The hearing originally convened on July 28, 2016 and was adjourned to September 22, 2016 where it completed.

Both parties appeared both hearings. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. Should the Tenant be entitled to change the locks on the rental unit?
3. Is the Landlord entitled to an Order of Possession and monetary compensation based on the 10 day Notice?
4. Should the Landlord recover the filing fee?

Background Evidence

Introduced in evidence was a copy of the residential tenancy agreement between the Tenant and B.W. On page 2 of this agreement the Landlord appoints U.R.E.A. Inc. as the Landlord's agent. Pursuant to clause 6, the rental period was noted as from October 1, 2014 to September 30, 2016. Monthly rent was payable in the amount of \$2,950.00 and the Tenant paid a security deposit in the amount of \$1,475.00.

I.M. testified on behalf of the numbered company who is identified as the Landlord in the parties' respective applications. I.M. confirmed that he is one of the directors of the numbered company and M.K. is the other. He testified that this company was created in March of 2016 and that through this company he and M.K. purchased the rental property from B.W. on May 20, 2016.

Documents introduced in evidence indicate the Tenant was provided Notice of the numbered company's purchase of the rental property in May of 2016.

Also introduced in evidence were copies of emails between the Tenant and the original owner, B.W. between April 7 and April 8, 2016 wherein the Tenant and B.W. discuss the sale of the rental unit. In this communication B.W. reminds the Tenant that the new owners will become the new Landlord until the end of the tenancy: September 30, 2016.

In the email correspondence from B.W. to the Tenant on April 8, 2016 at 1:11 p.m., B.W. writes that the new owner is female and sounds "Indian".

The Tenant disputes I.M. and M.K.'s claim as Landlord, or representatives of the Landlord, of the rental property and therefore disputes the validity of the Notice. He submits that I.M. and M.K. are in fact the realtors acting for B.W. in the sale of the property and that in the event they are the legal owners this occurred as a result of a fraudulent conveyance.

The Tenant testified that he also made an offer to purchase the property through I.M. and M.K. acting as realtors for B.W. During the hearing the Tenant submitted that he

was willing to pay the outstanding rent in escrow provided that he was given an indemnity from B.W. and I.M. and M.K. as he does not wish to be implicated in the transaction which he characterizes as fraudulent.

On numerous occasions during the hearing I informed the Tenant that the validity or legality of the transfer from B.W. to the numbered company is an issue which is not within my jurisdiction.

I.M. testified that the property management company, U.A., informed the Tenant in April of 2016 that the property had sold from B.W. to the numbered company effective June 15, 2016 (which was the original closing date).

M.K. stated that the closing date was moved up to May 20, 2016 as the owner wanted an earlier closing date.

Also introduced in evidence was a "Notice to Tenants" informing the Tenant that the numbered company had purchased the property as of May 20, 2016 and that rent was payable in the amount of \$2,950.00 per month on the 1st of the month to the numbered company. This Notice was signed by both property owners, B.W. and D.F.

M.K. testified that the Tenant did not pay the June 2015 rent as required. The Landlord provided in evidence a copy of an email from M.K. to the Tenant dated June 9, 2016 wherein the Tenant is reminded that his rent is nine days past due. A further email sent June 20, 2016 confirms that the Tenant's wife was personally served the 10 Day Notice to End Tenancy issued on June 15, 2016 indicating the sum of \$2,950.00 was due as of June 1, 2016 (the "Notice").

At the hearing M.K. testified that the Notice was personally served on the Tenant's spouse, M.G. A copy of the Proof of Service—Notice to End Tenancy was provided in evidence confirming the Tenant's wife was served at 3:40 p.m. on June 15, 2016. M.K. testified that he and the other owner, I.M. served M.G. which was witnessed by J.D., the postal worker for the building. M.K. testified that he was aware M.G. was the Tenant's spouse.

The Tenant applied for dispute resolution on June 20, 2016. In the details of Dispute section on his application he writes in part:

"...Shady real estate transaction occurred in a quick and secretive way (perhaps to evade tax) and the result is that there's now confusion about who the true

owner of apartment is now and who should receive rental income? Person demanding rent doesn't fit profile of person who old owner told me was the new buyer..."

M.K. testified that the Tenant also failed to pay rent for July 2016, August 2016, and September 2016 such that at the time of the hearing \$11,800.00 was outstanding in rent.

At the original date of the hearing, July 28, 2016, the Tenant claimed he had not received the Landlord's evidence package. As those documents confirmed the legal relationship of the numbered company to the property, and M.K. and I.M.'s relationship with the numbered company, I adjourned the hearing for the Tenant to have the opportunity to review those documents.

The hearing reconvened on September 22, 2016. At this time, the Tenant confirmed he received the Landlord's evidence, but continued to assert that the owners of the numbered company were not sufficiently connected to the property. He conceded that the documents proved they were the directors of the company, but there was insufficient proof that the numbered company was the registered owner of the property.

Introduced in evidence by the Landlord was a copy of the title search confirming the numbered company as the registered owner of the property.

During the September 22, 2016 hearing the Tenant claimed he did not receive a copy of the title search.

Also introduced in evidence was an email from the Landlord's former legal counsel sent May 13, 2016 in which the law office informs the Landlord that the Tenant came to the law office to view the Central Securities Register and Register of Directors of the Company. She further writes that the Tenant took photos of those documents.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant asserts the conveyance from his previous Landlord to the numbered company was fraudulent. He suggests the previous owner may not have been aware of the legal status of the directors of the company, whom he claims were also the previous Landlord's listing realtors. He further submits that as he made attempts to purchase

the property through the listing realtors, he may be implicated in this transaction and as such, he refuses to pay rent directly to the directors of the numbered company.

Any issue with respect to the legality or propriety of the real estate transaction is not within my jurisdiction.

The Tenant conceded that he has not paid the outstanding rent as requested on the Notice and has failed to pay rent for July 2016, August 2016 and September 2016.

Section 26 of the *Residential Tenancy Act* provides as follows:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 26 provides that a Tenant must pay rent until the tenant has a legal right *under the Residential Tenancy Act* not to pay rent. After careful consideration of the evidence before me, and on a balance of probabilities, I find the Tenant has failed to prove he has any such *legal right* under the *Residential Tenancy Act* to withhold rent.

The testimony and evidence filed by the directors of the numbered company indicates the numbered company became the registered owners of the rental unit on March 23, 2016.

The documentation submitted in evidence relating to the numbered company confirms that F.K. resigned as director of the numbered company on April 12, 2016 at the same time that I.M. and M.K. were appointed directors of the numbered company.

I find that the Tenant was provided notice by the previous owner, B.W. that on May 19, 2016 the numbered company had purchased the rental unit. I further find that B.W. informed the Tenant that rent would be payable to the new owners until the expiration of his tenancy term on September 30, 2016.

I find that the Tenant failed to pay the June rent as required. As a courtesy, M.K. sent an email to the Tenant reminding him to pay rent. When the Tenant refused or neglected to pay the June rent the Notice was issued.

While it is possible that the Tenant was unaware that M.K. and I.M. were directors of the numbered company in May of 2016, he was fully aware of the legal status of M.K. and I.M. as directors of the company after receiving the Landlord's evidence package in

support of their application before me. Despite receiving this information prior to the September 22, 2016 continuation of the hearing, the Tenant failed to pay the outstanding rent.

I find the Notice complies with section 52 of the *Act*. I further find that the Landlord has proven the reasons for issuing the Notice; namely that the Tenant has failed to pay the rent. Accordingly, I find 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.

I also find that the Landlord has established a total monetary claim of **\$11,900.00** comprised of outstanding rent for June 2016, July 2016, August 2016 and September 2016 as well as the \$100.00 fee paid by the Landlord for this application.

The Tenant's Application is dismissed in its entirety.

Conclusion

The Tenant's application to cancel the Notice is dismissed. The Tenant failed to pay the rent and the Landlord is entitled to an Order of Possession pursuant to sections 26, 46, and 55 of the *Residential Tenancy Act*.

The Landlord is also entitled to a Monetary Order in the amount of **\$11,900.00** representing the amounts owing for unpaid rent and recovery of the \$100.00 filing fee.

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: September 26, 2016

Residential Tenancy Branch