Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PW COMOX DEVELOPMENT LP
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes CNR MNR MNDC FF

Introduction

On June 21, 2016 the Landlord filed an application for Dispute Resolution seeking an Order of Possession for unpaid rent and/or utilities and a Monetary Order for unpaid rent and/or utilities; money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the cost of the filing fee.

On August 2, 2016 the teleconference hearing commenced and both parties were in attendance. A Decision was issued August 5, 2016 granting the Landlord an Order of Possession effective two days upon service and a Monetary Order in the amount of $8,827.71.

On August 17, 2016 the Tenant filed an Application for Review Consideration in response to the August 5, 2016 Decision and Order. On August 28, 2016 an Arbitrator granted the Tenant a Review Hearing and suspended the August 5, 2016 Decision and Orders pending the outcome of the Review Hearing.

The Review Hearing commenced on September 15, 2016 at 11:00 a.m. via teleconference. Two agents for the Landlord and the Tenant were in attendance at the Review Hearing. Each person gave affirmed testimony. I explained how the review 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.

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.

The application for Dispute Resolution listed one corporate landlord as the applicant; however, both agents who appeared at the Review Hearing and submitted evidence met the definition of a landlord, pursuant to section 1 of the *Act.* 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

Upon review of the application for Dispute Resolution the Tenant submitted that her first and middle name had been listed in reverse order on the application (M.E.W.). The Tenant requested that the application for Dispute Resolution be amended to change her name to the correct order as E.M.W., reversing her first and middle names.

The Landlords did not dispute this request. During the course of the proceeding the Tenant confirmed the Landlord had submitted copies of personal cheques (042 & 041) which the Tenant had issued and signed. Those cheques displayed the Tenant's name as M.E.W. as per the Landlord's application. From her own evidence submissions the Tenant has been referred to by the name starting with E and with the name starting with M. Accordingly, the style of cause has been issued in the name listed on the application for Dispute Resolution with the addition of second version of the Tenant's name (first and middle named reversed) after the initials a.k.a. which stand for: also known as, pursuant to section 64 of the *Act*.

The Landlords confirmed receipt of the evidence submitted by the Tenant that had been served to the Residential Tenancy Branch (RTB) with the Tenant's Application for Review Consideration. The Tenant confirmed receipt of the Landlords' September 12, 2016 evidence submission and noted that she did not pick that evidence up from the post office until September 14, 2016 the day before this Review Hearing. Upon further clarification the Tenant confirmed she had reviewed the Landlord's latest evidence submission and was prepared to provide oral submissions in response to that evidence.

Residential Tenancy Branch Rule of Procedure (Rules of Procedure) 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the service requirements set out in the Rules of Procedure.

In cases such as these, where a Review Hearing is scheduled with such a short turnaround time so as not to prejudice either party, it is next to impossible for both parties to submit additional evidence within the Rules of Procedure stipulated timeframes. Such timeframes normally relate to new applications for Dispute Resolution where the hearing is scheduled several weeks or months after the application is filed.

After consideration of the foregoing, in absence of any issues raised by either party, and in the presence of both party's readiness to present oral submissions, I accepted all relevant documentary submissions received on the RTB file by September 14, 2016, the day before the Review Hearing, pursuant to Rule of Procedure 3.17.

Both parties were provided with the opportunity to present relevant oral evidence, to ask 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

Should the original August 5, 2016 Decision and Orders be confirmed, varied, or set aside?

Background and Evidence

The Tenant submitted into evidence copies of: the original August 5, 2016 Decision; the August 5, 2016 Orders; and a copy of the August 28, 2016 Review Consideration Decision.

From the August 5, 2016 Decision the parties agreed the tenancy began on March 8, 2016 as a one year fixed term tenancy agreement for the monthly rent of $3,000.00. The Tenant now submits she did not sign the aforementioned tenancy agreement and now argued she had never seen that agreement prior to these hearing.

The Tenant initially testified she entered into a verbal tenancy agreement for the $3,000.00 monthly rent. She asserted it was approximately one or two weeks after her tenancy started that she verbally agreed to pay the Landlord an additional $40.00 per month for storage fees. As the Tenant continued her submissions she stated she had signed a different tenancy agreement which listed only the $3,000.00 rent and which made no mention of payments required for storage.

Upon review of the 10 Day Notice to end tenancy submitted in the Landlord's June 21, 2016 submissions that Notice listed a signature date of 03/05/2016 and indicated the Tenant was required to pay $5,785.55 that was due on June 1, 2015. Upon further clarification from the Landlord that Notice was served upon the Tenant on June 3, 2016 as per the Proof of Service Document submitted into evidence. The Landlord testified she recalled serving a previous Notice to the Tenant in May 2016.

The Tenant testified and confirmed she had received the above mentioned 10 Day Notice on June 6, 2016 and argued she returned the Notice to the Landlord along with her personal cheque for $3,040.00 and dated June 11, 2016. The Tenant asserted the 10 Day Notice should be cancelled as she paid her rent within the 5 day period and the Landlord refused to accept that payment.

The Landlords confirmed they had returned the Tenant's personal cheque to her given her history of submitting personal cheques which had been returned due to nonsufficient funds (NSF).

In their additional evidence in support of their application for Dispute Resolution the Landlords submitted copies of: a tenant payment ledger; their bank statements showing either NSF returned cheques and/or electronic fund transfers that were NSF from this Tenant as follows: March 21, 2016 $2,328.00 & $1,500.00; April 6, 2016 $1,500.00 & $2,378.00; May 4, 2016 $3,040.00; and June 3, 2016 $3,040.00; actual deposit sheets; the tenancy agreement; storage agreement; and their written submissions.

The Landlords testified the last payment they received from the Tenant that cleared the bank was a $560.00 money order that was deposited on June 17, 2016. They testified they have not received a valid payment for July, August or September 2016 rents. They submitted they were advised on Monday September 12, 2016 that the Tenant's most

recent personal cheque # 48 that was deposited September 8, 2016 has been returned NSF.

The Landlord responded to the Tenant's allegation of fraud in her written and oral submissions. In summary, the Landlord stated she interpreted the question of "was rent paid" to mean receipt of a payment which has cleared the bank. She confirmed receipt and return of the Tenant's June 11, 2016 personal cheque. The Landlord stated that had the Tenant identified that payment and/or cheque being returned as an issue or as payment of June 2016 rent during the August 2, 2016 hearing she would have responded to with their evidence of numerous NSF cheques.

The Tenant disputed the Landlords' submissions saying the non-payment of rent is a result of the Landlord not contacting her 10 days before rent payment is due. She asserted her evidence from her bank manager was sufficient evidence to prove the Landlord was attempting to deposit cheques drawn on the wrong account, an account that was closed, or electronic payments were being drawn incorrectly by the Landlord. The Tenant also asserted the Landlords are refusing to return her property which were PAD (Preauthorized Deposit or electronic transfer) agreements and void cheques.

The Tenant argued the Landlords know which one of her bank accounts to use for payment of rent and they also know that they are required to contact her 10 days before rent is due. The Tenant confirmed her September 2016 rent payment did not clear the bank and asserted she informed the Landlord on Sunday via email, that it was a bank error and not her error.

Analysis

The *Residential Tenancy Act* (the *Act)* stipulates provisions relating to these matters as follows:

Section 82(3) of the *Act* stipulates that upon review of the director's decision and/or order, following the Review Hearing, the director may confirm, vary or set aside the original decision or order.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The original Decision of August 5, 2016 was based on the facts and submissions by both parties who were each provided an opportunity to submit their evidence before the Arbitrator regarding the issuance of the 10 Day Notice to end tenancy.

From the August 5, 2016 Decision, (p 5 para 7) the Arbitrator found there was a typographical error on the issue day of the Notice and amended the issue date to read

June 3, 2016. Furthermore the Arbitrator found (p 6 para 3) as follows

> *The testimony and evidence of the Landlord indicates that the Tenant paid the Landlord a total amount of $7,938.00 by June 7, 2016. I find that the Tenant did not pay the Landlord all the rent that owed by June 11, 2016. The Tenant still owed the Landlord the amount of $3,287.71.*

The undisputed evidence before me was the Tenant provided the Landlord a personal cheque # 046 dated June 11, 2016 in the amount of $3,040.00. The Landlord refused to accept that personal cheque for the reason the Tenant had previous personal cheques that had been returned NSF.

I accept the Landlord's submissions that she did not commit fraud when she stated in August 2, 2016 hearing that no payment had been received from the Tenant for June 2016 rent. I further accept that the Tenant ought to have raised the issue of her June 11, 2016 personal cheque being return to her by the Landlord during the August 2, 2016 hearing. Especially if the Tenant was of the opinion that the 10 Day Notice ought to have been cancelled as a result of that payment.

In addition, I conclude that even if the Landlord had accepted the Tenant's June 11, 2016 cheque, the amount of that cheque was not the full $5,785.55 amount due as listed on the 10 Day Notice nor was it the $3,287.71 which was determined to be due by the previous Arbitrator. Accordingly, I find the 10 Day Notice was in full force and effect and I concur with the Decision and Orders issued on August 5, 2016 by the previous Arbitrator.

Accordingly, **I Confirm** the original Decision and Orders issued August 5, 2016, pursuant to section 82(3) of the *Act.* The aforementioned Orders are in full force and effect and have been copied to the end of this Decision.

As the issue of the order of the Tenant's first and middle names was not raised during the August 2, 2016 hearing, the style of cause has not been amended on the confirmed Decision and Orders.

I caution the Tenant that section 79 (7) of the Act stipulates that a party to a dispute resolution proceeding may make an application under this section (*application for review of director's decision or order)* only once in respect to the proceedings. The Tenant filed an Application for Review Consideration and was granted this new Review Hearing. Therefore, no further applications for Review Consideration may be filed by the Tenant regarding the August 5, 2016 Decision and Orders, pursuant to section 79(7) of the *Act*.

Conclusion

The Decision and Orders issued August 5, 2016 were **confirmed** and are in full force and effect. If the Tenant fails to comply with those Orders the Landlords are at liberty to file the Orders with Supreme Court or Small Claims Court as required for enforcement.

Furthermore, the Landlords are at liberty to file another application to recover any additional loss of rent they may have suffered as a result of this tenancy.

This decision is final, legally binding, and 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 15, 2016

Residential Tenancy Branch