



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and a witness for the landlord.

While the landlord's Application for Dispute Resolution named the current owner and the previous owners of the residential property as landlords I note that all rights and obligations under this tenancy transferred when the current owner took possession of the property. The landlord's submission noted that the property was purchased by the current owner in mid-April 2016.

As a result, I find that the named applicants on the landlord's Application who were the previous owners are no longer a party to this tenancy and cannot make any claims against the tenant. I note that this does not restrict the current owner's ability to claim against the tenant for any losses suffered as a result of this tenancy prior to their ownership of the property. Whether the current owner provides the former owners with any compensation is a matter between them and does not fall within the jurisdiction of the *Residential Tenancy Act (Act)*.

Therefore, I amend the landlord's Application to exclude the former owners as parties to these matters.

As a result of this finding, I also advised the current owner and the previous owner who attending the hearing that the previous owner could participate in this hearing as a witness but not the landlord. Therefore, I asked the former owner to leave the call and that we would call her into the hearing if we needed her to provide testimony. The witness was not called into the hearing.

The landlord also clarified at the outset of the hearing the amount of her monetary claim was reduced. Specifically she stated that she had received payment from the tenant of \$500.00 towards rent and utilities on October 25, 2016. She also stated that the tenant

had completed the painting that they had agreed upon and she no longer sought the \$100.00 deposit return for this work and she would attribute the balance of \$300.00 for the work to the outstanding rent and utilities.

To be clear the landlord reduced her claim from \$2,175.00 to \$1,275.00 as follows: \$275.00 for unpaid rent and utilities for April 2016; \$100.00 for unpaid rent and utilities for the month of October 2016; and \$900.00 for unpaid rent and utilities for the month of November 2016.

Throughout the hearing the tenant interjected into testimony provided by the landlord. I repeatedly asked the tenant to wait until I returned to him to provide testimony. He did follow that instruction but later noted that he felt that the landlord was given more opportunity to provide testimony. However whenever asked for his response to the landlords submissions his only response was that he was getting "screwed".

At the end of the hearing as I was explaining the possible outcomes to the proceeding the tenant became frustrated with the process; expressed an expletive; and hung up from the call.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on November 23, 2015 for a 1 year fixed term tenancy that began on December 1, 2015 for a monthly rent of \$850.00 plus \$50.00 for utilities due on the 1st of each month with a security deposit of \$425.00 paid. The tenancy agreement required the tenant to vacate the rental unit at the end of the fixed term; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2016 with an effective vacancy date of October 11, 2016 for unpaid rent in the amount of \$850.00 and \$50.00 in unpaid utilities that had been demanded on October 2, 2016.

The landlord submitted that the tenant had approached and stated that despite the fixed term tenancy agreement that required him to vacate the rental unit he would be leaving

the rental unit at the end of October 2016 and that he had been informed that he was entitled to receive 1 month's free rent.

The landlord submitted the tenant also had failed to pay the full month of April rent to the previous landlord. The landlord seeks compensation in the amount of \$275.00 as per the documented correspondence between the former owner and the tenant.

The landlord stated when he did not pay rent she issued him the 10 Day Notice. The tenant submitted that he did not pay the rent because the landlord had told him that she was going to convert the rental unit into an AirBnB rental.

The tenant also testified that he believed that because the previous landlord was no longer the landlord any outstanding rent was no longer required. The tenant provided no testimony disputing that he owed the rent for the month of April 2016.

Both parties provided testimony regarding the painting that they had agreed to. That is the parties confirmed that originally they had agreed that the landlord would pay the tenant \$400.00 for painting the rental unit. The landlord testified she provided the tenant with a \$100.00 deposit.

The landlord testified that since the tenant has completed the painting she has attributed the \$300.00 owed to the tenant by her to the outstanding rent. The tenant submitted that he provided the landlord with a bill for \$1,400.00 to \$1,500.00 for the painting and as such he believes he does not owe the landlord any monies for rent.

Analysis

In regard to the issue of payment from the landlord to the tenant for any work that the parties have contracted to I find that I have no jurisdiction. This arrangement is considered contracting outside of the *Act* and therefore does not fall within the jurisdiction of the *Act*.

Therefore, I can only consider testimony regarding the payment of compensation for painting as it relates to any payments made towards the payment of rent owed to the landlord.

That is to say, that I accept the landlord's undisputed testimony that she allowed \$300.00 to be reduced from the tenant's debt for rent based on the work he had completed. I also accept that the landlord's undisputed testimony that the tenant paid her \$500.00 on October 25, 2016.

If the tenant believes he is owed more money for the paint work that he has completed for the landlord he remains at liberty to pursue such a claim through a court of competent jurisdiction.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the Strata Property Act;
 - iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
 - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
 - vi. Convert the rental unit to a non-residential use.

Section 49(2) stipulates that the landlord may end the tenancy for such a purpose by giving a notice to end the tenancy effective on a date that must be (a) not earlier than 2 months after the date the tenant receives the notice; (b) the day before the day in the month, that rent is payable under the tenancy agreement; and (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

There is no evidence before me that, regardless of the landlord's plan, she issued to or the tenant received a 2 Month Notice to End Tenancy for Landlord's Use of Property as per Section 49. As a result, I find the tenant was never entitled to withhold any payment of rent at any time during the tenancy.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

While the tenant did submit an Application for Dispute Resolution within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent, I find the tenant has provided no justification, allowed under the *Act*, which would have allowed him to withhold any amount of rent at any time.

In addition, I find, based on the landlord's undisputed evidence and testimony that the tenant failed to pay the previous owner or the current owner the full amount of rent for the month of April 2016. Therefore, I find the landlord has established that on the day the 10 Day Notice was issued there was outstanding rent. I find the landlord has established the right to end the tenancy for unpaid rent.

As a result, I dismiss the tenant's Application for Dispute Resolution in its entirety and without leave to reapply.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

Section 68 of the *Act* allows that if a notice to end a tenancy does not comply with section 52, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice.

I note that the 10 Day Notice to End Tenancy for Unpaid Rent states that it was issued on November 2, 2016 and that all other documentation from both the tenant and the landlord states that the Notice was served to the tenant on October 2, 2016. I also note that both parties submitted their Applications for Dispute Resolution in relation to this Notice during the first week of October 2016.

As such, despite the fact that date on the Notice of November 2, 2016 is a full month after the date the parties acknowledge that it was served I find that both parties knew the Notice was actually being issued on October 2, 2016 and I find I reasonable to amend the Notice to reflect this correction.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply

with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,375.00** comprised of \$1,275.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$425.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$950.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 09, 2016

Residential Tenancy Branch