



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

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

- an Order of Possession for unpaid rent pursuant to sections 46 and 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 11:13 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. Landlord S.C. (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord gave undisputed affirmed testimony that the Landlords' Application for Dispute Resolution (the Application) and evidentiary package was personally served to the tenant by a process server on September 06, 2017. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidentiary package.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to the tenant by a process server on August 04, 2017. The landlord provided a copy of an Affidavit of Personal Service to confirm this personal service. In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenant.

At the outset of the hearing the landlords sought to increase their monetary claim from \$13,650.00 to \$14,300.00 to reflect the tenant's failure to pay \$325.00 in monthly rent

for September 2017 and October 2017, the additional months of unpaid rent waiting for this hearing.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord gave undisputed affirmed testimony that this tenancy began on or around August 02, 2000, with a monthly rent of \$325.00, due on the first day of each month. The landlord testified that no security deposit was paid by the tenant.

A copy of the signed 10 Day Notice identifying \$13,650.00 in unpaid rent, dated August 03, 2017, with an effective date of August 18, 2017, was included in the landlord's evidence.

A copy of a tenant ledger showing the rent owing and paid during this tenancy was also included in the landlord's evidence.

The landlords' amended application for a monetary award of \$14,300.00 is for the following items:

Unpaid March 2014 Rent – Unpaid October 2017 Rent = 44 months
44 months X \$325.00/month = requested monetary award of \$14,300.00

The landlord provided a letter from the landlord U.T., dated August 02, 2000, addressed to the tenant and establishing the monthly rent as well as other details of the tenancy.

The landlord provided another letter, dated June 06, 2017, that was addressed to the tenant explaining that the rental unit is under provincial jurisdiction "Due to the fact that we have a modern day treaty we are no longer federal wards and all of our land is owned by the #### (the landlord U.T.). British Columbia now has the jurisdiction as it is no longer Federal Land as per a normal Reserve."

The landlord also provided a letter, dated August 03, 2017, addressed to the tenant regarding the unpaid rent for the rental unit and the landlord's intention to pursue a resolution with the Residential Tenancy Branch.

The landlord testified that the tenant believed they were in a 'rent to own' situation and the tenant thought that they did not have to pay rent anymore after a certain amount of rent was already paid. The landlord testified that no written agreement was provided by the tenant and that the landlord is not able to find any record of this agreement. The landlord testified that a copy of the rental arrangements, dated August 02, 2000, was provided in the evidence in the form of a letter that was written to the tenant.

The landlord testified that the tenant moved out of the rental unit as of February 28, 2014, and around that same time the tenant verbally notified the landlord of their intentions to move out of the rental unit. The landlord testified that the tenant stated to the landlord that they could not pay rent for two places. The landlord testified that the tenant has left many of their personal belongings in the rental unit. The landlord testified that the tenant's son sporadically stays in the unit for a few days at a time when he goes fishing in the area.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Part 5, section 24 of the *Residential Tenancy Regulations (Regulations)* establishes that a landlord may consider that a tenant has abandoned personal property if that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent and the landlord receives an express oral or written notice of the tenant's intentions to not return to the residential property.

Residential Policy Guideline # 3 (RPG#3) states that:

"Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;

2. Accept the abandonment or end the tenancy, with the notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy....

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent."

I find that the equitable principle of *laches* operates to bar the landlord's claim. This is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the landlord's inordinate delay in asserting this claim and the manifest prejudice to the tenant that has resulted from the failure to make a timely objection warrants the denial of the landlord's monetary claim.

I find that the landlord did not act upon their rights under Part 5 of the *Regulations* in a timely manner when the tenant abandoned the rental unit and gave oral notice that the tenant was not intending to return to the residential property.

I find that the landlord could have determined that the rental unit was abandoned one month after the tenant moved out and stopped paying the monthly rent, which would have been March 31, 2014, in accordance with part 5 of the *Regulations*. I find the landlord did not mitigate their loss by attempting to re-rent the premises at a reasonable rate after determining that the rental unit was abandoned. Based on the above, since there was no fixed term lease for the rental unit, I find the landlord has the right to only claim for unpaid rent up to the date of abandonment as per RPG#3.

Section 60 of the *Act* states that an application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends. If an application for dispute resolution is not made within the 2 year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist for all purposes, except if an application for dispute resolution is made by a landlord or a tenant within the applicable limitation period under this *Act*, the other party to a dispute may make an application for dispute resolution...

Since I find that this tenancy ended on March 31, 2014, and the Landlords' Application was made on August 28, 2017, I find that the landlords' application is not within the 2 year limitation period of this *Act*. I further find that the landlords' application is not in response to an application made by the tenant within the limitation period of this *Act*.

For the above reasons, I find that the landlord's claim in relation to this tenancy ceases to exist as it is not in compliance with section 60 of the *Act*.

Based on the landlord's undisputed written evidence, affirmed testimony and the above, I dismiss the landlords' application, without leave to reapply.

Since I have found that the tenant abandoned the rental unit on March 31, 2014, the landlords do not require an Order of Possession. However, as the tenant has continued to use the rental unit and has left her personal property in the unit, I grant the landlords a Two (2) day Order of Possession to facilitate possession of the unit back to the landlords pursuant to section 62 of the *Act*.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The remainder of the Landlords' Application is dismissed without leave to reapply.

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: October 23, 2017

Residential Tenancy Branch