



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords' Application: OPR; OPC; MNR; FF

Tenant's Application: CNC; CNR; CNE; MNDC; RP; LRE; RR

Introduction

This Hearing was scheduled to consider cross-applications. The Landlords seek an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The Tenant seeks to cancel three Notices to End Tenancy; compensation for damage or loss under the Act, regulation or tenancy agreement; and Orders for regular repair, restriction of the Landlords' right to access the property, and a rent reduction.

These matters were heard on November 1, 2017, and adjourned to December 4, 2017, in order to allow the parties to provide additional documentary evidence. An Interim Decision was issued on November 1, 2017, which should be read in conjunction with this Decision.

It was determined that the Landlords served the Tenant with their additional documentary evidence. The Tenant did not provide any additional documentary evidence to the Residential Tenancy Branch or to the Landlords.

Issue(s) to be Decided

Does the Residential Tenancy Act apply to this dispute? If so, should the tenancy end? Is either party entitled to monetary compensation from the other?

Background and Evidence

The Landlord provided a copy of a letter from his realtor SB dated November 6, 2017, which provides:

“To the best of my recollection there was an agreement to rent to own on 172 Williamson Place with [the Tenant] the buyer. To the best of my knowledge this was a 24 month agreement. This was never a purchase with owner financing. I don’t recall the exact payment amount but was in the range of \$3000/month in which a portion was to go towards the downpayment with the other lump sum amounts required to increase the downpayment.

These amounts were never met and payments did at times fall in arrears. The last of my involvement which was over 3 years ago to the best of my knowledge was that it was agreed that the property wouldn’t be purchased. The rent was then reduced moving forward as the property wasn’t to be purchased. I believe this amount was \$2000/month plus utilities.

Any payments, agreements etc in the interim I have no knowledge or any discussions with either [the Landlord MR] or [DM].

[Reproduced as written]

The Tenant testified that he has paid rent in full for the months of September, October, November and December, 2017. He stated that he was not in arrears for August, 2017, as alleged by the Landlords, and that rent is totally up to date. The Tenant stated that he paid rent in cash to the Landlord.

Later on in the Hearing, the Tenant stated that he paid rent in cash, by money order, and by e-transfer.

Later on in the Hearing, the Tenant stated that he paid rent to the Landlord “in product”. When questioned what the “product” was, he stated that it was medical marijuana.

The Tenant submitted that CB’s letter did not make sense because on one hand it provided that the Tenant paid an additional \$1,000.00 per month for 24 months, and on the other hand it provided that the Tenant paid an additional \$1,000.00 up until 3 years ago. The Tenant submitted that the tenancy is 8 years old, and therefore the time periods “don’t add up”. The Tenant stated that he paid an additional \$60,000.00 in rent to the Landlords (\$12,000.00 a year for 5 years) before his rent was reduced to \$2,000.00 per month.

The Landlord MR testified that the Tenant paid \$1,000.00 per month towards a down payment for the first 24 months only. He stated that the Tenant was not able to buy the property at the end of the 24 month period, so “after that, we adjusted the rent to absorb the over-payment”. MR stated that “everything was good until June, 2017”, when the Tenant fell behind in rent payments.

MR testified that the Tenant has not paid any rent for September, October, November or December and has paid none of the arrears of \$10,350.00 for which a 10 Day Notice to End Tenancy was issued on August 2, 2017. MR denied being paid rent by “product”. He said that the Tenant gave him a “box of stuff”, which MR gave to a friend.

Analysis

Based on the evidence provided by both parties, I find that the Tenant’s right to purchase the rental unit for \$650,000.00 was not exercised and I accept jurisdiction over this tenancy.

There were many inconsistencies in the Tenant’s testimony. For example, on November 1, 2017, the Tenant stated that he “paid \$6,000.00 a month to SB, \$4,000.00 of which was to go towards a down payment”. On December 4, 2017, the Tenant testified that he paid \$1,000.00 a month towards a down payment. In addition, the Tenant stated that he paid rent in cash only, and then stated that he sometimes paid rent by money order and e-transfer, and finally that he paid rent in “product”.

If the Tenant did provide “product” in lieu of rent, I find that it was a separate agreement and not part of the tenancy agreement. Furthermore, I find that the Tenant did not provide sufficient evidence to prove the value of the product or that it in fact was tendered as rent payment.

Both parties agreed that rent was \$2,000.00 per month; however, the Landlord did not give the Tenant receipts for rent paid in cash over the term of the tenancy. The Landlord did not provide a copy of a ledger or accounting which indicated what payments the Tenant made towards rent and when the payments were made.

Based on the documentary evidence provided, I find that the Tenant received the Notice to End Tenancy for Unpaid Rent on August 2, 2017. I am satisfied, on the balance of probabilities, that some rent is owed to the Landlord and that some rent was owed at the time the Notice to End Tenancy for Unpaid Rent was issued and served. I am also satisfied that the Tenant did not pay the rent that was owed to the Landlord within 5 days of receipt of the Notice. Therefore, I hereby provide the Landlord with an Order of Possession. I find that the tenancy ended on August 12, 2017, and that the Tenant is overholding. The

tenancy is over and therefore I dismiss the Tenant's request for Orders for repair, restriction of the Landlords' right to access the property, and a rent reduction.

I decline to issue a Monetary Order to the Landlords, as I find that they did not provide sufficient evidence of the amount that the Tenant owes. I also decline to issue a Monetary Order to the Tenant, as I find that he did not provide sufficient evidence that he overpaid rent to the Landlord.

I order that both parties bear the cost of their filing fees.

Conclusion

The Tenant's Application is dismissed.

The Landlords are hereby provided with an Order of Possession effective 2 days after service of the Order upon the Tenant. This Order may be enforced in the Supreme Court of British Columbia.

The Landlords' application for a Monetary Order is dismissed.

This interim 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: December 4, 2017

Residential Tenancy Branch