



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR, ERP, OLC, OPRM-DIR, FFL

Introduction

A hearing was convened on June 15, 2017 in response to cross applications.

On October 05, 2017 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, to cancel a Notice to End Tenancy for Unpaid Rent; for an Order requiring the Landlord to make emergency repairs; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

On October 20, 2017 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, and to recover the cost of filing an Application for Dispute Resolution.

These matters were the subject of a dispute resolution proceeding on December 19, 2017. That matter was adjourned to provide the parties with the opportunity to re-serve evidence to the other party. Legal Counsel for the Landlord stated that the only document not yet received from the Tenant was the Tenant's Application for Dispute Resolution. He declined the opportunity to adjourn the hearing for the purposes of being served with that document and indicated the Landlord was willing to proceed without that document.

At the hearing on January 15, 2018 I confirmed that the parties had been served with all of the evidence that was available to me at the time of the hearing and that evidence was accepted as evidence for these proceedings.

The parties were advised that I have the first page of the tenancy agreement that was submitted in evidence by the Landlord. The Landlord stated that the entire tenancy agreement was submitted to the Residential Tenancy Branch and was served to the Tenant. The Tenant acknowledged that the entire tenancy agreement was served to her. Given that this evidence is submitted electronically by the Landlord, I find it highly likely that the Landlord inadvertently failed to upload the entire tenancy agreement. I therefore allowed the Landlord to re-submit the full agreement to the Residential Tenancy Branch. The entire tenancy agreement was submitted to the Residential Tenancy Branch by the Landlord on January 16, 2018 and it was considered during this adjudication.

Legal Counsel for the Landlord stated that the Landlord submitted a two page hand-written ledger to the Residential Tenancy Branch and that he served this document to the Tenant. The Tenant acknowledged receipt of this document.

The parties were advised that I was not in possession of the two page ledger. Given that this document was served to the Tenant I find it highly likely that the Landlord inadvertently failed to upload this ledger. I therefore allowed the Landlord to re-submit the ledger to the Residential Tenancy Branch. It was submitted to the Residential Tenancy Branch on January 16, 2018 and it was considered during this adjudication.

Legal Counsel for the Landlord stated that the Landlord submitted a letter, dated February 17, 2017, in which the Landlord informed the Tenant her employment was being terminated. The Tenant acknowledged that she was served this letter as evidence for these proceedings.

The parties were advised that I was not in possession of the letter dated February 17, 2017. Given that this document was served to the Tenant I find it highly likely that the Landlord inadvertently failed to upload this letter. I therefore allowed the Landlord to re-submit the letter to the Residential Tenancy Branch. It was submitted to the Residential Tenancy Branch on January 16, 2018 and it was considered during this adjudication.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings. All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Preliminary Matter #1

Upon reviewing the evidence at the conclusion of the hearing I determined that it was appropriate for me to view the original tenancy agreements submitted in evidence by each party and the original rent receipts submitted in evidence by the Tenant. In my interim decision of January 15, 2018 the parties were directed to submit those original documents pursuant to rule 3.8 of the Residential Tenancy Branch Rules of Procedure.

On January 30, 2018 the Landlord submitted the full original tenancy agreement the Landlord had submitted in evidence.

On January 23, 2018 the Tenant submitted the original tenancy agreement the Tenant had submitted in evidence and the original receipts. These documents were photocopied and the originals were inadvertently returned to the Tenant by Residential Tenancy Branch staff.

On February 01, 2018 a Residential Tenancy Branch Information Officer left a message for the Tenant, requesting that she re-submit the original tenancy agreement and the original rent receipts.

On February 15, 2018 I issued an interim decision in which the Tenant was directed to re-submit the original tenancy agreement and the original rent receipts.

By the time this decision was rendered, the original tenancy agreement and the original rent receipts had not been re-submitted by the Tenant. I am therefore rendering this decision without having the opportunity to view the original documents in the Tenant's possession.

Preliminary Matter #2

Upon considering the evidence at the conclusion of the hearing I determined that it was important to determine the method of payment used to pay rent, which was not a subject that was raised during the hearing. In my interim decision of January 15, 2018 the parties were therefore given the opportunity to submit a written submission in which the party outlines the method of payment used to pay rent since May 01, 2016.

In the event the rent was paid in a form other than cash, the parties were also given the opportunity to a written submission explaining why they did not submit documentary evidence, such as bank statements or cancelled cheques, which help to establish the amount and dates that rent was paid.

On January 23, 2018 the Tenant submitted a document in which she declared that she paid her rent in cash.

On January 30, 2018 the Landlord submitted a document in which an agent for the Landlord declared that Tenant paid her rent in cash.

Preliminary Matter #3

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties have identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

At these proceedings I am going to consider only the issues related to the payment of rent and the Landlord's attempt to end the tenancy, as they relate to possession of the rental unit. These include the Landlord's application for an Order of Possession; the Tenant's application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent and/or the One Month Notice to End Tenancy; and the Landlord's application for a monetary Order for unpaid rent.

The Tenant's application for an Order requiring the Landlord to make emergency repairs and for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause and/or the Notice to End Tenancy for Unpaid Rent, served pursuant to sections 46 and 47 of the *Act*, be set aside?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary Order for Unpaid Rent?

Background and Evidence

The Landlord and the Tenant agree that the Tenant was living in the rental unit prior to the current owner purchasing the unit.

The Landlord and the Tenant agree that after the rental unit was purchased the new Landlord and the

Tenant entered into a new tenancy agreement, which declared that the tenancy was beginning on May 01, 2016.

The Landlord and the Tenant agree that the monthly rent was \$850.00 but was reduced by \$100.00 per month in exchange for tasks the Tenant completed that are associated with managing the residential complex.

The tenancy agreement submitted in evidence by the Tenant declares that rent is \$750.00 “= 100 for cleaning and Manager things”. The tenancy agreement submitted in evidence by the Landlord declares that rent is \$850.00 less 100.00 for “cleaning and Manager things”.

The Tenant stated that she began paying full rent of \$850.00 in December of 2016, as she was no longer acting as a manager for the Landlord.

Legal Counsel for the Landlord stated that the Landlord sent the Tenant a letter, dated February 17, 2017, in which the Landlord informed the Tenant that was no longer needed as a building manager. The Tenant stated that she did not receive this letter until she received it as evidence for these proceedings.

Neither of the tenancy agreements submitted in evidence declare the date that rent is due. The parties agree that rent was due by the first day of each month.

Legal Counsel for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the Tenant's door on October 03, 2017. This Notice declared that the Tenant owed \$1,475.00 and that she must vacate the unit by October 13, 2017. The Tenant stated that she located this Notice to End Tenancy on the ground sometime before October 01, 2017.

Legal Counsel for the Landlord stated that a One Month Notice to End Tenancy for Cause was posted on the Tenant's door on September 30, 2017. This Notice declared that the tenancy was ending because she was repeatedly late paying her rent and that she must vacate the unit by October 31, 2017. The Tenant stated that she located this Notice to End Tenancy on September 30, 2017.

Legal Counsel for the Landlord read out several relevant entries on the two page hand-written “ledger”, a copy of which was received after the hearing. The Tenant agreed that Legal Counsel accurately reported the entries. The relevant entries are:

- January - \$750.00
- February - \$750.00
- March – \$850.00
- April - \$850.00
- May - \$475.00
- June - \$850.00
- July - \$800.00
- August - \$800.00
- September - \$700.00

Legal Counsel for the Landlord stated that the aforementioned entries represent the rent payments that were made between January 01, 2017 and October 30, 2017. He stated that on the basis of those payments the Landlord contends that the Tenant still owes rent in the following amounts:

- May - \$375.00
 - July - \$50.00
 - August - \$50.00
 - September - \$150.00
 - October – \$850.00
- Total - \$1,475.00

The Tenant stated that she has paid all the rent that was due. She stated that she always paid her rent on time and often paid it several days prior to the date it was due.

She contends that she paid the rent in accordance with the rent receipts she submitted in evidence, which include:

- a receipt for \$750.00, dated September 20, 2016, which was rent for October of 2016;
- a receipt for \$750.00, dated October 29, 2016, which was rent for November of 2016;
- a receipt for \$850.00, dated November 28, 2016, which was rent for December of 2016;
- a receipt for \$850.00, dated December 21, 2016, which was rent for January of 2017;
- a receipt for \$850.00, dated January 01, 2017, which was is presumably a duplicate receipt for rent for January of 2017, although this was not discussed at the hearing;
- a receipt for \$850.00, dated February 01, 2017, which was rent for February of 2017;
- a receipt for \$850.00, dated March 01, 2017, which was rent for March of 2017;
- a receipt for \$850.00, dated April 01, 2017, which was rent for April of 2017;
- a receipt for \$850.00, dated April 29, 2017, which was rent for May of 2017;
- a receipt for \$850.00, dated June 28, 2017, which was rent for July of 2017;
- a receipt for \$850.00, dated July 27, 2017, which was rent for August of 2017;
- a receipt for \$750.00, dated August 26, 2017, which declares it is rent for September of 2017; and
- a receipt for \$850.00, dated September 27, 2017, which declares it is rent for October of 2017.

The Tenant stated that she wrote the rent receipts and had the Landlord sign them in an effort to establish that her rent had been paid. She stated that she reduced the rent for September of 2017 in compensation for cleaning she completed at the rental unit and she signed this document to acknowledge the rent reduction.

The Agent for the Landlord contends that he did not provide any rent receipts to the Tenant. He stated that the signatures on the receipts are similar to his signature but they were not written by him. The Landlord contends that the receipts are forgeries and are not credible.

Neither party submitted evidence from a hand writing expert to establish whether the receipts were signed by the Landlord.

The Landlord and the Tenant agree that the tenancy agreement submitted in evidence by the Tenant indicates that the tenancy is for a fixed term, the fixed term of which began on May 01, 2016 and was to end on May 01, 2016 (same year). The Landlord and the Tenant agree that the tenancy agreement submitted in evidence by the Landlord indicates that the tenancy is for a month to month basis.

Legal Counsel for the Landlord argued that the difference in the two tenancy agreements damages the credibility of the Tenant.

Neither party could explain why several areas on the tenancy agreement submitted by the Tenant appear to have been “overwritten” to emphasize the words on several areas.

The Tenant contends that she did not make any changes to the terms of the tenancy agreement. She stated that an agent for the Landlord presented her with one copy of the tenancy agreement; that she signed that agreement; and kept the document that she signed. She stated a few days later the same individual presented her with another copy of the tenancy agreement; that she signed that agreement; and the agent for the Landlord took that copy.

Analysis

On the basis of the testimony of both parties I find that the monthly rent was \$850.00 which was reduced by \$100.00 per month in exchange for tasks the Tenant completed that are associated with managing the residential complex.

On the basis of the testimony of the Tenant I find that she stopped acting as a manager, effective December 01, 2016. I therefore find that she became obligated to pay full rent of \$850.00, effective December 01, 2016.

Although the Landlord contends that the Landlord terminated the Tenant's employment by way of the letter dated February 17, 2017, I find that Tenant's testimony is sufficient to cause me to conclude that she terminated her employment sometime prior to December 01, 2016.

I have compared the original tenancy agreement submitted by the Landlord with the copy of the tenancy agreement submitted by the Tenant and I find that the agreement submitted by the Landlord was created prior to the agreement submitted by the Tenant. In reaching this conclusion I was influenced by the fact the Tenant's initials on the second page of the agreement submitted by the Landlord have been crossed out and the Tenant's initials on the second page of the agreement submitted by the Tenant appear to have been written on top of the crossed out initials. This causes me to conclude that the copy submitted by the Tenant is an altered version of the agreement submitted by the Landlord.

In determining that the agreement submitted by the Tenant is an altered version of the agreement submitted by the Landlord I was further influenced by the fact that her copy has been "overwritten" to emphasize the words in several places. In particular I note that most of the information on the first page of the agreement has been "overwritten" on the copy submitted by the Tenant. Although none of the information on the first page appears to have been changed it appears to have been overwritten, perhaps with the intent of making a photocopy of the original document more legible.

In determining that the agreement submitted by the Tenant is an altered version of the agreement submitted by the Landlord I was further influenced by section 2(a) on page 2 of the agreement. On the Landlord's agreement this section is checked but on the Tenant's agreement it is not, although a faint mark can be seen in this section that causes me to believe it had once been checked.

In determining that the agreement submitted by the Tenant is an altered version of the agreement submitted by the Landlord I was further influenced by section 2(b)(i) on page 2 of the agreement. On the Landlord's agreement this section is checked but on the Tenant's agreement it is not, although a faint mark can be seen in this section that causes me to believe it had once been checked.

In determining that the agreement submitted by the Tenant is an altered version of the agreement submitted by the Landlord I was further influenced by the fact that there are several entries on the

agreement submitted by the Tenant that do not appear on the agreement submitted by the Landlord. These added entries include:

- the Tenant is permitted 3 pets, rather than 2 pets;
- the Tenant paid a pet damage deposit of \$425.00 X 3, although on the Landlord's copy this deposit has a notation beside it that indicates a pet damage deposit is not applicable;
- storage is included with the rent; and
- the tenancy is for a five year fixed term.

I find, on the balance of probabilities, that the Tenant, or a person acting on behalf of the Tenant, altered the tenancy agreement she submitted in evidence. In reaching this conclusion I was influenced by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In concluding that the Tenant, altered the tenancy agreement I was influenced, in part, by the fact that at least four of the altered entries benefit the Tenant, including the change in the number of pets permitted, the payment of a pet damage deposit, storage being provided with the tenancy, and the number of parking spaces. I find it highly unlikely that the Landlord would have altered the tenancy agreement to include these additional services/benefits without informing the Tenant of the changes and without a corresponding rent increase.

In concluding that the Tenant altered the tenancy agreement I was influenced, to some degree, by the fact the Tenant did not re-submit the original tenancy agreement after being directed to do so. If the Tenant did not alter the tenancy agreement I find it likely that she would have taken the opportunity to re-submit the agreement after receiving a telephone request and a second written directive to do so.

In concluding that the Tenant altered the tenancy agreement I found her explanation of why there were two different agreements to be implausible. If the Tenant kept the first agreement that was presented to her, as she contends, she would have retained the original unaltered agreement. If the Landlord had retained the second agreement that was presented to the Tenant, as the Tenant contends, the Landlord would have retained the amended agreement. If the Landlord had altered the agreement after the Tenant had signed it, it would be the Landlord who submitted the altered agreement. As discussed, it was the Tenant who submitted the altered agreement.

I find that the Tenant's credibility is significantly impaired by the altered tenancy agreement she submitted in evidence.

I find that there is insufficient evidence to conclude that the Tenant was provided with rent receipts during this tenancy. In reaching this conclusion I was heavily influenced by the Landlord's submission that no rent receipts were provided and by the Agent for the Landlord's testimony that he did not sign the rent receipts submitted in evidence by the Tenant.

As the Tenant's credibility has been compromised by the tenancy agreement she submitted in evidence, I find that these receipts must be considered with a significant amount of caution.

The Tenant's failure to re-submit the original rent receipts after she received a telephone request and a second written directive to do so support my decision to consider these receipts with significant caution. As I have not had the opportunity to view the original rent receipts I cannot determine, with any degree of certainty, that they are authentic receipts.

I note that there appears to be an inconsistency in the rent receipts which raises additional concerns about their authenticity. I note that there is a receipt, dated December 21, 2016, which was for rent for January of 2017 and a receipt for \$850.00, dated January 01, 2017, which is also presumably for rent for January of 2017. I find that this error is the type of error that would be expected when a person is fabricating receipts, rather than an error that would be made when issuing a receipt at the time of payment.

I note that there appears to be a second problem with the rent receipts which raises additional concerns about the authenticity of the receipts. I note that there is no rent receipt for June of 2017. I find that it entirely possible that a person fabricating a series of receipts could inadvertently miss a month when a series of receipts are being created, particularly when two receipts were created for January of 2017. The party could easily assume the series of receipts are correctly dated simply because the number of receipts equals the number of alleged monthly payments.

As there is insufficient evidence to establish that the rent receipts are authentic, I find that they are of little evidentiary value.

I find that the two page hand-written "ledger" submitted in evidence by the Landlord is of limited evidentiary value, as it is a document that was created by the Landlord and is not verified by a third party. Although the creation of the document was not discussed at the hearing, this document appears to be simply a summary of events rather than a record of payments made at the time of payment. I find that this document has significantly less value than a bank statement or a traditional ledger.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to the claim for unpaid rent the burden of proving that rent was not paid rests with the Landlord.

I find that the testimony of the Agent for the Landlord was consistent and forthright. I therefore prefer his testimony over the testimony of the Tenant, as I have found the Tenant lacks credibility.

I therefore accept the Landlord's testimony that rent of \$1,475.00 is outstanding for the period between January 01, 2017 and October 30, 2017 and I find that the Tenant owes the Landlord \$1,475.00 in rent.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Although the Landlord has acknowledged receipts were not provided for cash payments during this tenancy, I find that the testimony of the Agent for the Landlord in these circumstances is sufficient to corroborate the claim that rent was not paid and to refute the Tenant's submission that it was paid.

Section 46(1) of the *Act* authorizes a landlord to end a tenancy if rent is unpaid on any day after the rent

is due by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Although the Landlord contends the Ten Day Notice to End Tenancy for Unpaid Rent, dated October 03, 2017, was posted on the Tenant's door on October 03, 2017 and the Tenant contends she located it on the ground sometime before October 01, 2017, I am satisfied that she received this Ten Day Notice to End Tenancy sometime between October 01, 2017 and October 03, 2017.

As the Tenant owed rent on October 03, 2017 and the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Landlord has the right to end this tenancy, pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent and I grant the Landlord's application for an Order of Possession.

As I have granted the Landlord an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, I find it is not necessary for me to consider whether the One Month Notice to End Tenancy for Cause should be set aside or whether the Landlord is entitled to an Order Possession on the basis of this Notice.

I find the Application for Dispute Resolution filed by the Landlord has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on March 31, 2018. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,575.00, which includes \$1,475.00 in unpaid rent and the filing fee of \$100.00. I therefore grant the Landlord a monetary Order for \$1,575.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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: March 06, 2018

Residential Tenancy Branch