Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRLS-L, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Applicant J.W., who is a current owner, R.B., who is also a current owner, the previous owner J.P., and the Tenant, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

The Tenant stated that despite the fact that the Landlords filed the Application on March 9, 2018, they waited more than two months to serve her their evidence, which she did not receive until May 10, 2018. The Tenant stated that they should have served their evidence on her immediately or as soon as possible and stated that the delay was unreasonable.

J.W. acknowledged that the evidence was not served on the Tenant until May 10, 2018, but stated that the reason it was served late is because they were making continual attempts to reach settlement with the Tenant outside of the dispute resolution process.

Section 59(3) of the *Act* states that a person who makes an application for dispute resolution must give a copy of the application to the other party within three (3) days of making it, or within a different period specified by the director. Rule 3.14 of the Rules of Procedures states that documentary and digital evidence that is intended to be relied upon at the hearing must be received by the respondent and the residential Tenancy Branch (the "Branch") not less than 14 days before the hearing. Rule 3.17 goes on to state that evidence not provided to the other party or the Branch in accordance with the *Act* or the Rules of Procedure may or may not be considered and that the arbitrator has the discretion to determine whether to accept that evidence provided the evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

All parties were in agreement that the Application and the Applicant's complete evidence package were not received by the Tenant until May 10, 2018. While I agree that the Application was not served on the Tenant in compliance with section 59(3) of the *Act*, the Tenant received the Application and the Applicant's documentary evidence at least 18 days before the hearing, which complies with section 3.14 of the Rules of Procedure. I also find that the Tenant had sufficient time to consider and respond to the Application and the Applicant's evidence as she appeared at the hearing, ready to proceed, and submitted her own evidence in response to the Application. Further to this, I note that this matter relates only to the payment of rent and a signed mutual agreement to end tenancy, which the Tenant does not dispute signing. As a result of the above, I find that there is no breach of natural justice or prejudice to the either party in accepting the Landlord's evidence for consideration. The evidence was therefore accepted for consideration and the hearing proceeded as scheduled.

Preliminary Matter #2

. The Tenant alleged that J.W. and R.B are not in fact owners of the property and are therefore not her landlords. In support of her testimony she submitted land title registry documents showing that as of March 15, 2018, J.P. was still the owner of the property. J.W. and R.B. testified that although they were set to take possession on March 1, 2018, as per the contract of purchase and sale, the sale was conditional upon having vacant possession. They stated that because the Tenant and her family did not move out on February 28, 2018, as required by the mutual agreement to end tenancy, the closing of the property was delayed until approximately May 10, 2018, when they closed the sale and became owners of the property despite the fact that they did not have vacant possession.

In the absence of evidence to the contrary, I accept that as of the date of the hearing, J.W. and R.B. are the owners of the property in which the Tenant resides. Section 1 of the *Act* includes in the definition of a landlord, the owner of a rental unit. As a result, I find that J.W. and R.B. are landlords under the *Act* and will therefore be referred to collectively as the "Landlords" throughout this decision. In any event, the previous owner of the property and the original landlord for the tenant, J.P., was also present in the hearing. As a result of the above, the hearing proceeded as scheduled with the parties present

Preliminary Matter #3

At the outset of the hearing the Tenant stated that the surname listed for her on the Application is no longer correct as she now uses her maiden name. The Tenant provided me with the spelling of her correct and current legal surname and the Application was updated accordingly.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 44 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began between the Tenant and J.P.

The Landlords testified that on January 1, 2018, the Tenant signed a mutual agreement to end the tenancy as of 4:00 P.M. on February 28, 2018, and provided a copy of the signed mutual agreement in the documentary evidence before me. Although the Tenant acknowledged that she signed the mutual agreement to end tenancy, she argued that she did not fully understand the agreement when she signed it as a portion of the form was covered by a clipboard clip and she is dyslexic. She also argued that she was not of sound mind when she signed the form but did not submit any documentary or other evidence to corroborate this testimony.

In the Application, the Landlord also sought $2,400.00 in outstanding rent for September 2017 – February 2018; however, during the hearing the Landlord withdrew this claim to make it easier on the Tenant to find new accommodation and move out of

the premises. In any event, the outstanding rent may in fact be owed to the previous Landlord J.P., who is not the Applicant in this matter.

Analysis

Section 44(1)(c) of the *Act* states that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. There is a signed mutual agreement to end tenancy in the documentary evidence before me whereby the Tenant agreed to end the tenancy as of 4:00 P.M. on February 28, 2018, and the Tenant does not dispute that this agreement was signed. Although the Tenant argued that she was not of sound mind at the time she signed the mutual agreement to end tenancy, she did not provide any evidence to support this testimony. As a result, I give this testimony and the argument that the mutual agreement is therefore invalid, no weight. Further to this, while the Tenant argued that she did not fully understand the mutual agreement to end tenancy when she signed it, I find that it was incumbent upon her to read and understand the agreement prior to signing it and I do not find that any failure to do so, should it have occurred, excuses her from the obligations agreed to. Based on the above, I find that the tenancy legally ended by mutual agreement at 4:00 P.M. on February 28, 2018, and that the Tenant and any other occupants are currently overholding the rental unit.

Based on the above, and pursuant to section 55 of the *Act*, the Landlord J.W. is therefore entitled to an Order of possession, which by agreement of the Landlords, will be effective May 31, 2018, at 1:00 P.M.

Although the Landlord J.W. sought $2,400.00 in outstanding rent in his Application, during the hearing he withdrew this claim. In any event, there is some question in my mind regarding whether this rent is owed to the current Landlords or the Previous Landlord. As a result, no findings of fact or law have been made in relation to outstanding rent.

As the Applicant was successful, I find that he is entitled to the recovery of the $100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord J.W. effective **1:00 P.M. on May 31, 2018,** after service of this Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order,

this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the Landlord J.W. a Monetary Order in the amount of $100.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 24, 2018

Residential Tenancy Branch