



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes CNL

Introduction

A hearing was convened on May 26, 2020. In my decision dated May 28, 2020, I dismissed the Tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use and I granted the Landlord an Order of Possession for the rental unit.

On May 30, 2020 the Tenant submitted an Application for Review Consideration. A different Residential Tenancy Branch Arbitrator granted the application for review and ordered that the hearing be reconvened. The Arbitrator ordered that the issues to be considered at the reconvened hearing would be limited to the Landlord's Mutual Agreement to End Tenancy for his alleged former tenancy and a May 12, 2020 letter from his alleged former Landlord.

The Advocate for the Tenant stated that the Review Consideration Package was served to the Landlord's mailing address, via registered mail. The Landlord acknowledged receipt of these documents.

The Tenant submitted evidence to the Residential Tenancy Branch on July 07, 2020. The Advocate for the Tenant stated that this evidence was served to the Landlord, via email, on July 07, 2020. The Landlord acknowledged receipt of this evidence. As the Landlord acknowledged receipt of the evidence and the Landlord has had sufficient time to consider the evidence, the evidence was accepted as evidence for these proceedings.

The Landlord submitted evidence to the Residential Tenancy Branch on July 10, 2020. The Landlord stated that this evidence was personally served to the Tenant on July 11, 2020. The Tenant acknowledged receipt of this evidence. As the Tenant acknowledged receipt of the evidence and it was served in accordance with the

timelines established by the Residential Tenancy Branch Rules of Procedure, the evidence was accepted as evidence for these proceedings.

The Tenant submitted additional evidence to the Residential Tenancy Branch on July 19, 2020. The Advocate for the Tenant stated that this evidence was served to the Landlord, via email, on July 19, 2020.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure establishes that a Respondent must receive evidence from the Applicant not less than 14 days before the hearing.

The evidence submitted to the Residential Tenancy Branch on July 19, 2020 was not served in accordance with the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party.

In these circumstances the Landlord only had one day to consider the evidence served to him on July 19, 2020. I find that the Landlord did not have a reasonable opportunity to review the late evidence submitted by the Tenant and, therefore, that the admission of this evidence would be prejudicial to the Landlord.

Rule 3.17 also sets out that I may consider “late” evidence when the submitting party can show that the “late” evidence is new and relevant. I find that all of the new evidence submitted on July 19, 2020 primarily relates to the need for repairs to the rental unit, which is not relevant to the limited issues in dispute at this review hearing.

For these reasons, I exercised my discretion to exclude all new evidence submitted to the Residential Tenancy Branch on July 19, 2020.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord, the co-owner of the residential property, the Tenant, and the Tenant’s advocate affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter

Section 74(3) of the *Residential Tenancy Act (Act)* stipulates that I may administer oaths for the purpose of this *Act*. I typically affirm all participants and witnesses, although I am not required to do so.

I inadvertently neglected to affirm the Witness for the Landlord. As I am not required to affirm witnesses, I do not find that my error negates the value of the Witness' testimony.

Although I did not affirm the Witness for the Landlord, I find that his evidence was credible, as it was delivered in a thoughtful and consistent manner. As the Witness for the Landlord is the Landlord's son, he cannot be considered an unbiased witness.

Issue(s) to be Decided

Does any of the evidence presented at this hearing cause me to alter or set aside my original decision to cancel the Two Month Notice to End Tenancy for Landlord's Use that was the subject of this first hearing and/or to and suspend the Order of Possession I granted on May 28, 2020?

Background and Evidence

My original decision to dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use was based, in part, on the Mutual Agreement to End Tenancy submitted by the Landlord. I concluded that this document established that the Landlord was taking steps to move out of the premises he was renting on March 10, 2020, which supported his submission that he intends to move into the rental unit once it is vacant.

My original decision to dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use was based, in part, on a letter dated May 12, 2020. In this letter the author declared that he/she is the owner of the premises cited on the Mutual Agreement to End Tenancy, that the Landlord has been a tenant at that address since November 01, 2019, and that he/she is aware that the Landlord has purchased a home and is planning on moving in May or June.

On May 30, 2020 the Tenant filed an Application for Review. In the Application for Review the Tenant declared that the address for the rental unit cited on the Mutual Agreement to End Tenancy and on the aforementioned letter is fictitious. For privacy reasons, I will refer to this address of the rental unit cited on the Mutual Agreement to End Tenancy as "15787 "A" Street". In support of this submission the Tenant submitted a document that showed there were "No Results" when a search was conducted of the BC Assessment Authority's website for 15787 "A" Street.

In support of this submission the Tenant also submitted a map or site plan of the area where Landlord was allegedly renting. The Advocate for the Tenant stated that she obtained this map/site plan from the BC Assessment website. She stated that website plan did not print civic addresses on the map/site plan. She stated that she wrote the individual civic addresses on the map/plan, which she obtained by clicking on each individual site on the website. She stated that 15787 "A" Street did not appear on the map/site plan.

The Residential Tenancy Branch Arbitrator granting this review hearing granted the review on the basis of the aforementioned submission and this hearing will be limited to determining the merit of that submission.

The Landlord does not dispute the submission that 15787 "A" Street does not exist.

The Landlord stated that his former landlord completed the Mutual Agreement to End Tenancy and that his former landlord wrote the incorrect address on that document. He stated that the address on the document is incorrect and that the correct street address of the rental premises is 15878 on the same street. For privacy reasons, I will refer to the corrected address of the rental premises as "15878 "A" Street".

The Landlord submitted a document, dated June 10, 2020. The author of this document declares that he is the owner of 15878 "A" Street and he apologized for incorrectly recording the address on the Mutual Agreement to End Tenancy and on the letter dated May 12, 2020. The Landlord submitted a 2020 Property Tax Notice that shows the owner of 15878 "A" Street has the same name as the author of this letter.

The Tenant submits that 15787 "A" Street was recorded at two locations on the Mutual Agreement to End Tenancy and on one occasion on the letter dated May 12, 2020. The Tenant contends that the Landlord's former landlord intentionally recorded a fictitious address, as she submits it is "unbelievable" that a landlord would incorrectly record the address of the rental premises on three occasions.

The Landlord stated that while he was living at 15878 "A" Street his landlord provided an incorrect address when he was ordering food for delivery, which resulted in a delivery delay.

In support of the Tenant's submission that the Landlord's former landlord intentionally recorded a fictitious address on the Mutual Agreement to End Tenancy and the letter dated May 12, 2020, the Advocate for the Tenant stated that the Landlord would have

submitted a title search to show that the former landlord owned the property allegedly being rented by the Landlord if they had intended to identify the correct address on those documents.

Legal Counsel for the Landlord noted that the Landlord submitted a 2020 Property Assessment Notice prior to the first hearing, which was accepted as evidence for that hearing. This document identifies the author of the letter dated May 12, 2020 as the owner of 15878 "A" Street. Upon raising this document, the Advocate for the Tenant acknowledged that this document was served as evidence to the Tenant prior to the first hearing.

The Advocate for the Tenant submits that the Landlord is the director of a company and that he knew, or should have known, that the address of his alleged rental unit was incorrectly recorded on the Mutual Agreement to End Tenancy and the letter dated May 12, 2020.

The Advocate for the Tenant submits that if the Landlord lived at 15878 "A" Street, he should have been able to submit mail or banking documents that establish his residency there.

The Landlord stated that he did not notice the address was incorrectly recorded on the Mutual Agreement to End Tenancy and the letter dated May 12, 2020 because he rarely used the address of his rental unit. He stated that he rarely used that address because his mail is sent to a personal friend's home in Vancouver.

The Landlord submitted a letter, dated July 09, 2020, from an individual who identified himself as a family friend of the Landlord. In the letter the author declares that the Landlord used his address as a mailing address while he "has been moving and in transition from home to home".

The Advocate for the Tenant stated that registered mail sent to the Landlord's mailing address in Vancouver on June 11, 2020 was delivered on June 12, 2020, which infers that he was living at the address. She acknowledged that she did not check the Canada Post website to determine if the Landlord signed for the package that was delivered on June 12, 2020.

The Landlord stated that he did not sign for the package that was mailed to his mailing address on June 11, 2020 and that it was provided to him by the homeowner.

The Landlord submitted a letter from an individual who declared that he lived at 15878 "A" Street with the Landlord and a letter from a neighbour who declared that he has seen the Landlord at that address. The Tenant noted that she does not have the ability to cross-examine the author of most of the documentary evidence submitted by the Landlord.

The Witness for the Landlord, who is the Landlord's son, stated that after his parents divorced his father rented in several locations, that his father moved to 15878 "A" Street in September of 2019, and that he visited his father there "once or twice". Upon questioning from the Advocate for the Tenant, the Witness stated that in November of 2019 his father moved some equipment to the rental property in November of 2019, which had previously been stored in Langley, BC.

Upon questioning from the Advocate for the Tenant, the Witness for the Landlord stated that he has never mailed anything to 15878 "A" Street and that his father uses his godfather's address as a mailing address.

The Landlord stated that he moved equipment to 15878 "A" Street in September of 2019, at which time he was paying monthly rent of \$500.00. He stated that he began living at that address in November of 2019, at which time he began paying rent of \$800.00. He stated that he does not know why his son stated that he moved to the address in September of 2019.

The Tenant submits that the Landlord and the Witness for the Landlord should not be considered credible witnesses, in part, because the Landlord stated that his mailing address he uses is a friend's residence and the Witness for the Landlord stated that the Landlord's mailing address is his godparent's residence.

The Landlord submitted a letter, dated June 26, 2020, from a pastor of a church located near 15878 "A" Street. In the letter the pastor declares that the Landlord is a registered parishioner who has attended Mass since September of 2019. The Tenant submits that the Landlord could attend this church regardless of where he was living.

The Landlord submitted a Google Maps search, which shows that 15878 "A" Street exists. The Tenant does not dispute that 15878 "A" Street exists.

The Tenant agreed that the document that showed there were "No Results" when a search was conducted of the BC Assessment Authority's website for 15877 "A" Street is

of no evidentiary value, now that the Landlord has declared that the correct address for the rental unit is 15878 "A" Street.

Analysis

I find, on the balance of probabilities, that the landlord of 15878 "A" Street inadvertently recorded an incorrect address on the Mutual Agreement to End Tenancy and on the letter dated May 12, 2020.

In determining that that incorrect address was inadvertently recorded on the Mutual Agreement to End Tenancy and on the letter dated May 12, 2020 I was influenced, in part, by the letter dated June 10, 2020 in which the author of the letter identified himself as being the owner of 15878 "A" Street apologizes for recording the address incorrectly on those documents. Although the Tenant does not have the ability to question the author of this letter, which reduces the evidentiary value of the letter to some degree, I have no reason to wholly disregard the information provided in the letter.

In adjudicating this matter, I find that the Mutual Agreement to End Tenancy, the letter dated May 12, 2020 and the apology letter dated June 10, 2020 all appear to be signed by the same individual. I further find that this individual is named on the 2020 Property Tax Notice as the owner of 15878 "A" Street.

In determining that that incorrect address was inadvertently recorded on the Mutual Agreement to End Tenancy and on the letter dated May 12, 2020 I was influenced, in part, by the fact the two addresses are remarkably similar. The incorrect address is 15787 and the correct address is 15878. Given the similarity in the numbers, I find it reasonable that the former landlord simply confused the numbers of the rental property.

I do not concur with the Tenant's submission that it is highly unlikely that a landlord would incorrectly record the address of the rental premises on three occasions. Presuming that the former landlord confused the address when he initially completed the Mutual Agreement to End Tenancy, I would fully expect him/her to record the incorrect address on both places on the Mutual Agreement to End the Tenancy.

I accept that it is less likely the former landlord would incorrectly record the address of the rental premises on the Mutual Agreement to End Tenancy and the letter dated May 12, 2020, given that they were completed on different dates. It is possible, however, that the address was recorded incorrectly on both documents because the former

landlord was referring to the Mutual Agreement to End Tenancy when he/she wrote the letter dated May 12, 2020.

I find it highly unlikely that the former landlord would intentionally record a fictitious address on the Mutual Agreement to End Tenancy and the letter dated May 12, 2020, as I cannot conceive of any logical reason for doing so. Given that the former landlord owns 15878 “A” Street, it would serve no purpose to falsely declare that the rented premises was located at 15787 “A” Street.

I find that the 2020 Property Assessment Notice for 15878 “A” Street submitted by the Landlord prior to the first hearing supports my conclusion that the former landlord inadvertently recorded an incorrect address on the Mutual Agreement to End Tenancy and on the letter dated May 12, 2020. As this document clearly identifies the author of the letter as the owner of 15878 “A” Street, I find it likely that the author of the letter intended to declare that he was the landlord of 15787 “A” Street, rather than 15878 “A” Street.

On the basis of the testimony of the Landlord and the absence of evidence to the contrary, I find that the Landlord uses an address in Vancouver as a mailing address and he did not use 15878 “A” Street as his mailing address. This testimony is supported by the written submission from the individual who lives at the mailing address used by the Landlord. Although the Tenant does not have the ability to question the author of that written submission, which reduces the evidentiary value of the letter to some degree, I have no reason to wholly disregard the information provided in the letter.

I make no negative inference from the fact the Landlord did not notice the incorrect address was written on the Mutual Agreement to End Tenancy and on the letter dated May 12, 2020. Given the similarity in the numbers, I accept it was a simple mistake to overlook.

I make no negative inference from Landlord’s submission that he uses a mailing address in Vancouver. I find it is relatively common for people to not use a rental suite as a mailing address, particularly when they are in transition and do not intend to stay in the suite for an extended period, so they can avoid the need to repeatedly change addresses.

I place no weight on the Tenant’s submission that registered mail sent to the Landlord’s mailing address in Vancouver on June 11, 2020 was delivered on June 12, 2020. I am aware that Canada Post was delivering registered mail to front doors, without the need

for a signature, on June 12, 2020 due to the COVID-19 pandemic. In the absence of any evidence to refute the Landlord's testimony that he did not sign for the delivery, I cannot conclude that the delivery suggests that he resided at the mailing address.

In adjudicating this matter, I was influenced, to some degree, by the letter from the individual who declared that he lived at 15878 "A" Street with the Landlord. Although the Tenant does not have the ability to question the author of this letter, which reduces the evidentiary value of the letter to some degree, I find that it still serves to support the Landlord's submission that he was renting at that address.

In adjudicating this matter, I placed no weight on the letter from a neighbour who declared that he has seen the Landlord at 15878 "A" Street. As the neighbour does not declare that he believed the Landlord was living at that address, I cannot conclude that it supports the Landlord's submission that he was renting at that address.

In adjudicating this matter, I was influenced, to a small degree, by the letter from the pastor of a church located near 15878 "A" Street. Although this letter does not clearly establish that the Landlord has been living at 15878 "A" Street, it supports the Landlord's submission that he was living at the address, as people typically attend churches near their residences.

On the basis of the testimony of the Landlord and the letter dated May 12, 2020, I find that the Landlord began living at 15878 "A" Street on November 01, 2019. I find that this evidence is more reliable than the Witness for the Landlord's testimony that his father moved there in September of 2019. I find the Witness for the Landlord's testimony less reliable in this regard, in large part, because he is less directly involved in the living arrangements and, as such, is less likely to know the details of the tenancy.

Although I find that the Witness for the Landlord is less reliable in regard to the date the tenancy began, I do not find that he intentionally attempted to mislead. I certainly do not find that the discrepancy in move-in dates suggests that the Landlord did not rent at that address.

I do not concur with the Tenant's submission that the Landlord and the Witness for the Landlord should not be considered credible witnesses because the Landlord stated that the mailing address he uses is a friend's residence and the Witness for the Landlord stated that the Landlord's mailing address is his godparent's residence. Often godparents are close family friends, rather than relatives, and I have no reason to conclude that the parties have provided conflicting evidence in this regard.

I find that the map or site plan of the area where Landlord was allegedly renting is of limited evidentiary value, as it does not serve to establish that 15878 "A" Street is a fictitious address, nor is there any suggestion that 15878 "A" Street is a fictitious address.

I am satisfied, based on the evidence presented at the hearing on July 20, 2020, that the Landlord did not intend to mislead these proceedings when he submitted documents indicating he was ending his tenancy at 15787 "A" Street. I find that the documents were intended to show that he was ending his tenancy at 15878 "A" Street.

Although an incorrect address is cited on the Mutual Agreement to End Tenancy submitted by the Landlord, I remain satisfied that it shows the on March 10, 2020 the Landlord took steps to move out of the premises he was renting on "A" Street. I remain satisfied that the document strongly indicates the Landlord planned to move out of the home he was renting by June 15, 2020 which, in my view, supports his submission that he intended to move into the residential complex once it is vacated.

Although an incorrect address is cited on the letter, dated May 12, 2020, in which the author declares that he/she is the Landlord's landlord and that he/she is aware that the Landlord has purchased a home and is planning on moving in May or June, I remain satisfied that this letter serves to support Landlord's submission that he plans to move out of his rented home and into the residential property.

After considering all of the evidence presented at both hearings, I find, on the balance of probabilities, that the Landlord intends, in good faith, to move into the rental unit.

I am therefore satisfied that the Landlord has grounds to end this tenancy pursuant to section 47(3) of the *Act* and I dismiss the application to cancel the Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenant. As the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use has been dismissed and the notice complies with section 52 of the *Act*, I find that the Landlord remains entitled to the Order of Possession that was granted for this rental unit on May 28, 2020.

Conclusion

The Order of Possession for this rental unit, which was granted on May 28, 2020, remains in full force and effect.

In the event the Tenant does not vacate the rental unit in accordance with this Order of Possession, the Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: July 21, 2020

Residential Tenancy Branch