



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC LTD 0879993 Jonbecca Holdings LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

1. an order for the landlord to comply with the *Act*, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62 of the *Act*; and
2. an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act*, pursuant to section 62 of the *Act*.

Both parties attended the hearing. The landlord was represented by SS. The tenant was assisted by advocates AS, MB and MM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Named Applicant

Pro Bono Institution AP was named as an applicant. Advocate AS explained AP is the institution that is offering legal advice to the tenant and that AP is not an applicant.

Section 64(3)(c) of the *Act* allows me to amend the application, which I have done to remove AP as an applicant.

Preliminary Issue – Service of Documents

The tenant affirmed he served the application and the evidence, not including videos and including photographs and text messages, by registered mail on June 26, 2020. The landlord confirmed receipt of the application including text messages. The landlord affirmed there were no photographs in the evidence.

I find, on a balance of probabilities, based on the tenant's coherent testimony, that the tenant served the application and the evidence, including photographs and text messages, in accordance with section 89(1)(c) of the Act.

The landlord did not serve any evidence.

Preliminary Issue – Transitional Housing Program and Jurisdiction

The landlord affirmed the tenancy agreement is a transitional housing program. The tenant affirmed the tenancy agreement is not a transitional housing but a regular tenancy agreement.

The landlord explained there are 5 bedrooms in the rental unit and the landlord has 1 of the bedrooms for his personal usage. Sometimes the landlord spends the night in the rental unit and shares the kitchen and the bathroom with the tenants.

The tenant testified the landlord never spent one night in the rental unit, shared the kitchen or the bathroom with the tenants. The tenant argued all the bedrooms in the rental unit are rented and the tenancy agreement is not on a temporary basis.

Advocate AS affirmed the rental unit is not a transitional housing, as it is not on a temporary basis and there are no programs to assist tenants to become better able to live independently.

Section 1(2) of the Regulation states:

- (2) For the purposes of section 4 (f) of the Act [what the Act does not apply to], "transitional housing" means living accommodation that is provided
 - (a) on a temporary basis
 - (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and
 - (c) together with programs intended to assist tenants to become better able to live independently.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support his claim. The landlord did not call any witnesses.

I find the landlord failed to provide sufficient evidence that the tenancy is a transitional housing program. Thus, I find the tenancy between the parties is a residential tenancy under the Act and I have jurisdiction.

Preliminary Issue – Tenant's Order of Possession

The tenant affirmed the landlord evicted him and he applied for an order of possession (the file number is mentioned on the cover page of this decision). The tenant's application for an order of possession was successful and the tenant was issued an order of possession on July 31, 2020.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to comply with the Act, regulations, and/or tenancy agreement?
2. an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act*?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the periodic tenancy started on November 01, 2019 and that monthly rent of \$500.00 is due on the 15th day of the month. The tenant affirmed the landlord collected a security deposit of \$250.00 and which they hold in trust. The landlord disputed this fact and said they did not collect a security deposit.

The tenant said the heat has been off for a couple of months and the tenant continuously asked in person and by text messages for the landlord to restore these services, arguing heat is an essential service. The landlord did not do so and instead the tenant was forced to use his personal portable space heaters. The tenant would like the landlord to be ordered to provide heat to the rental unit, as the rental unit's temperature was below habitable at 14 or 15° Celsius at night.

The landlord argued the rental unit temperature was never cold, and that the tenant was instructed not to adjust the rental unit's furnace system despite continuously doing so. The landlord stated the tenant used two portable space heaters in the rental unit and the rental unit's temperature is very hot. The tenant disagreed with the landlord's testimony, saying he does not know where the rental unit's furnace system is located.

Advocate AS and the tenant stated they are not sure what relief they were seeking under the application for the landlord to comply with the Act.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Order for the Landlord to Comply with the Act

Based on the tenant's application and testimony and advocate AS testimony, I find the tenant did not disclose details of the application for order for the landlord to comply with the Act.

Thus, pursuant to section 62(4)(b) of the Act, I am dismissing the tenant's application for an order for the landlord to comply without leave to reapply.

Order for the Landlord to Provide Services or Facilities

The parties offered conflicting verbal testimony regarding whether or not heat has been provided in the rental unit.

The tenant did not provide any documentary evidence to support his claim. The tenant did not call any witnesses.

Rule of Procedure 7.4 It states:

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Although Rule of Procedure 7.4 was explained during the hearing, the tenant and his advocates did not present the evidence submitted. The text messages were generally and vaguely mentioned by the tenant and advocate AS, but not presented.

I find the tenant failed to provide sufficient evidence, on a balance of probabilities, that heat has not been provided in the rental unit. As such, I dismiss the tenant's application for an order for the landlord to provide services or facilities.

Conclusion

The tenant's 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: August 04, 2020

Residential Tenancy Branch