



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALBEC QUESNEL LTD.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes OPT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 05, 2020 (the "Application"). The Tenant applied for an Order of Possession for the rental unit.

The Tenant appeared at the hearing with the Witness. The Witness was not involved in the conference call until required. J.D. and K.G. appeared as agents for the Landlord (the "Agents"). I explained the hearing process to the parties and answered their questions in this regard. The parties and Witness provided affirmed testimony.

The Agents provided the full name of the Landlord which is reflected in the style of cause.

The Tenant sought to call a second witness during the hearing. I allowed the Tenant to do so. However, we waited from 12:21 p.m. until 12:33 p.m. and the witness did not call into the hearing. I told the Tenant we could not wait longer for the witness as 12 minutes was more than enough for the witness to have called into the hearing and the hearing had already gone over the hearing time set by 33 minutes. I concluded the hearing at 12:33 p.m. without hearing from the second witness. I note that the Tenant wanted to call the second witness to testify about the Landlord unlawfully evicting the second witness. I also note that testimony on this point would not have affected the decision in this matter.

The Tenant had submitted a Monetary Order Worksheet seeking compensation. At the hearing, the Tenant also said he wanted compensation. The only issue on the Application is the request for an Order of Possession for the rental unit. The Application is considered an emergency application and the Tenant was given a priority hearing because of this. I did not allow the Tenant to amend the Application to a monetary

claim, which would not have been given a priority hearing, because of this. The Tenant was required to file a different or separate application if he was seeking compensation. After being advised of my decision on this point, the Tenant said he wished to proceed with the request for an Order of Possession.

At the time of the hearing, the Tenant had submitted evidence, but the Landlord had not. I addressed service of the hearing package and Tenant's evidence and the Agents confirmed receipt of these.

K.G. advised that the Landlord did submit evidence. I did not have this evidence before me. The Tenant confirmed receipt of the Landlord's evidence. Given the Tenant had received the Landlord's evidence, I allowed K.G. to upload the Landlord's evidence by October 19, 2020. The evidence was uploaded by the deadline. However, much of the evidence is illegible given the size of the document uploaded.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the testimony of the parties and Witness as well as the documentary evidence. I have only referred to the evidence I find relevant in this decision.

I note that during the hearing I asked the Tenant to confirm whether the Witness was a witness or there to assist the Tenant. I told the Tenant he could have the Witness assist him and that he simply needed to tell me this was happening. The Tenant said the Witness was just acting as a witness. After the Witness provided testimony, I told the Witness she could leave or stay in the room if she wished. However, the Witness then started talking to the Tenant and telling the Tenant what to say during the hearing. I told the Tenant and Witness that the Witness should not be telling the Tenant what to say when she was appearing at the hearing as a witness and not to assist the Tenant or act as an agent or advocate for the Tenant. I told the Witness to leave the room given her role was as a witness and she was done providing her testimony.

Issue to be Decided

1. Is the Tenant entitled to an Order of Possession for the rental unit?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement between the Tenant and Landlord. The tenancy started February 15, 2020. Rent was \$575.00

per month due on the first day of each month. The Tenant paid a \$287.50 security deposit and \$287.50 pet damage deposit, both of which the Landlord still holds.

The Tenant testified as follows. The Landlord turned his hydro off illegally. He then cancelled his hydro account because he did not want to make payments for this when he could not use hydro. On September 24, 2020, there was a fire in the building. Occupants of the building had to leave so he went to stay with a friend. He went back to the rental unit September 25, 2020; however, the smoke was still bad so he could not stay. He went back to the rental unit three or four days later and another tenant of the building was living in the rental unit. His belongings were gone from the rental unit. The lock to the rental unit had been changed. Some but not all his belongings were put in storage by the Landlord.

The Tenant submitted that the Landlord did not have authority to evict him and did so unlawfully.

The Witness testified as follows. There was a fire in the Tenant's building September 24, 2020. The Tenant came to stay with her. The Tenant went back to the building September 25, 2020 but the smoke was still too strong and so the Tenant stayed with her a couple more days. She returned to the building with the Tenant three to five days later. The Tenant went to open his door and they heard dogs barking. They knocked on the door. They later found out the locks had been changed. Another tenant of the building had moved into the rental unit. None of the Tenant's belongings were in the rental unit.

J.D. submitted that the Tenant abandoned the rental unit and testified as follows. On August 04, 2020, the Landlord received a letter from BC Hydro advising that the Tenant had cancelled his hydro account. The Landlord did not shut the Tenant's hydro off, the Tenant cancelled his account. The Tenant had not paid rent since the start of the tenancy and \$4,025.00 in rent was outstanding. The Tenant had been contacted about rent payments a number of times, but rent was never paid. The Landlord posted a notice to enter the rental unit on the door of the rental unit August 20, 2020. This notice also advised the Tenant of the Landlord's intent to consider the rental unit abandoned. The Landlord did not hear from the Tenant until the week of September 16 or 17, 2020 when he came back to check on his belongings. The Tenant's belongings were still in the rental unit at that time.

J.D. further testified as follows. The fire in the building started September 12, 2020. At that point, the Tenant had not been seen at the rental building by anyone for a month.

The Landlord assumed the Tenant had abandoned the rental unit and moved out. The Tenant never gave notice ending the tenancy or that he was moving out.

J.D. further testified as follows. The Landlord changed the locks to the rental unit September 21, 2020. The Tenant was not living in the rental unit when the locks were changed. The Landlord entered the rental unit September 21, 2020, documented the Tenant's belongings and put the belongings in storage. At that time, there were no clothes, food or toiletries in the rental unit. There was only furniture left in the rental unit.

J.D. further testified as follows. Given the fire and that the rental unit had been abandoned, the Landlord moved another tenant into the rental unit. This tenant is living in the rental unit until their unit is repaired which will take a couple of weeks.

J.D. advised that the Tenant was given an opportunity to obtain his belongings September 16, October 02 and October 08, 2020. J.D. advised that the Tenant can come and get his belongings.

The Tenant testified as follows in reply. All his belongings are damaged, so he does not want them back. J.D. is not telling the truth. He has text messages from staff of the Landlord admitting the Landlord shut his hydro off. His rent was paid up to date. It is not true that he was not around the rental unit building for a month. He submitted a receipt from March showing he paid rent.

At the end of the hearing, the Tenant and J.D. discussed rent payments. During this discussion, J.D. acknowledged the Tenant had made one payment during the tenancy.

I have reviewed the documentary evidence but do not find it necessary to outline here given my decision below.

Analysis

Section 54 of the *Residential Tenancy Act* (the "Act") states:

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

The parties agree a tenant of the rental unit building has moved into the rental unit. The Tenant testified that the other tenant was living in the rental unit when he went back three or five days after his September 25, 2020 attendance. The Witness testified that another tenant of the building was living in the rental unit when she attended with the Tenant three to five days after September 25, 2020. J.D. testified that the Landlord moved another tenant of the building into the rental unit given the fire and given the Tenant had abandoned the rental unit. J.D. testified that the intention is that the other tenant will live in the rental unit until their unit is repaired which will take a couple of weeks.

I decline to issue the Tenant an Order of Possession for the rental unit because there is another tenant of the building living in the rental unit. At this point, the Landlord does not have possession of the rental unit, the other tenant of the building does. Therefore, the Landlord cannot give possession of the rental unit to the Tenant and I decline to order the Landlord to do so.

In the circumstances, the Tenant's request for an Order of Possession of the rental unit is dismissed. However, I dismiss the Application with leave to re-apply. If the other tenant of the building vacates the rental unit, and the rental unit remains vacant, the Tenant can re-apply for an Order of Possession if he wishes to move back into the rental unit and continue the tenancy.

I note that I make no findings on whether the Tenant abandoned the rental unit or whether the Landlord had authority to change the locks to the rental unit as it is not necessary to do so given I cannot issue the Tenant an Order of Possession regardless.

Conclusion

The Application is dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 20, 2020

Residential Tenancy Branch