Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, OLC, LRE, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- to dispute a rent increase that is above the amount allowed by law;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- to recover the cost of the filing fee.

The applicants/tenants BB, MB, ST, the landlord, and the landlord's legal counsel (counsel) were present at the beginning of the hearing. The hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. All parties provided affirmed testimony they were not recording the hearing.

The tenants confirmed receiving the landlord's evidence and the landlord confirmed receiving the tenants' application and evidence.

Thereafter parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Procedural Matters-

#1

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application.

Rule 6.2 provides that the arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. *For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.*

I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the Notice and the tenant's application to recover the cost of the filing fee at this proceeding. I sever the other issues in the tenants' application, and the disposition of those issues will be determined within this Decision after my consideration of the request to cancel the Notice.

#2

At the end of the hearing, the tenant stated they just received the landlord's evidence "last week". Without an explanation as to why this statement was made, I interpreted the testimony to mean the tenants did not have time to look at the evidence.

Counsel asserted that the three attending tenants received their evidence by personal service on March 15, 2022, that tenant BM was served by email, and at the beginning of the hearing, the tenants confirmed receiving the landlord's evidence.

I find the landlord complied with their obligations under Rule 3.15 regarding service of the respondent's evidence.

I note the tenants did not object to the timeframe for service of the landlords' evidence or request an adjournment at the beginning of the hearing. Further the tenants did not explain why they would not have been able to read and review the landlord's evidence within the 9 days between service and the hearing.

Additionally, at the end of the hearing, the tenants inquired whether they could appeal my Decision when it was made, and information was provided to the tenants in response.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or are the tenants entitled to an order cancelling the Notice?

Background and Evidence

The landlord, through counsel, filed written submissions in response to the tenants' application, which included written and photographic evidence.

Counsel's written submissions –

Counsel submitted that tenant BB entered into a written tenancy agreement with the landlord's son, DF, commencing January 1, 2014, for the upper level of the residential property. The lower level was used to run a business owned and operated by DF. The tenancy was on a month-to-month basis and the monthly rent was $1,200.

Tenant BB had possession of the written tenancy agreement. There was an agreement that BB could provide independent contracting services that would either completely or partially satisfy a monthly rent payment.

On April 28, 2021, DF passed away and his parents, the landlord GF, and mother, KF, took over running the business; however, a number of issues with BB's performance arose along with other issues, which prompted DF's parents to relocate the business to their home.

On October 5, 2021, BB was informed that his services were no longer required, at which time the landlord had a discussion about the cost of renting the whole house now that the business was relocated. GF informed BB that the rent for the entire house was $2,000 per month. Later that day, BB emailed the landlord to inquire further about renting the whole house.

BB followed up about the new lease on October 20, 2021, and a new lease was drawn up and signed by the parties for the entire home, for a tenancy start date of November 1, 2021, and a monthly rent of $2,000. The new tenancy agreement contained only the name of BB as tenant, and listed only BM and MB as allowed occupants. Despite this, tenant SB added his name as a party to this dispute.

BB was not under any duress when he signed the tenancy agreement. On October 28, 2021, BB sent the landlord a text regarding difficulty in coming up with $2,000, at which time the business made a gratuitous payment to BB so the first month's rent could be paid.

In a November 28, 2021, email, BB outlined that only $1,000 would be transferred for rent going forward and that no payment would be made for the security deposit, as required by the new lease. This email contained inaccuracies such as the former monthly rent for the upper level was $1,200, not $1,000.

BB has continued to pay only $1,000 per month and the tenant was served a 10 Day Notice to end the tenancy on December 4, 2021.

Evidence filed by the landlord included the first page of the tenancy agreement for a start date of February 1, 2014, for a monthly rent of $1,200, notating the monthly rent was the "Upper Level", a business operations agreement, signed by BB and GF on February 1, 2014, emails between the landlord and BB, a letter terminating BB's subcontracting work in lieu of rent, dated October 5, 2021, the written tenancy agreement showing a tenancy start date of November 1, 2021, for the residential property address, between the landlord and BB, for a monthly rent of $2,000, a security deposit of $1,000, with an addendum listing BB as the sole renter and BM and MB as

the only allowed room mates in the home, a text message from BB to GF dated October 28, 2021, and a written notice from BB stating the reason he would not be paying $2,000 a month, and that he would only pay $1,000 a month due to the rent being illegally increased.

Tenants' response –

Tenant MB testified that the written tenancy agreement should not have been changed. MB said that BB's room had always been downstairs and that BB moved out in 2014 and then moved back in in September 2021.

MB testified that according to contract law, there should have been no change in the tenancy agreement as there had been no change in residents. MB testified that the whole house was always contemplated as part of the tenancy, as there were no amenities downstairs, such as a stove and oven.

BB testified that he did not sign the 2014 tenancy agreement and was not given a copy of it. BB said that BM, who was not present, was the tenant. MB said he moved into the rental unit in June 2021 and SB said he moved in in January 2021.

The tenants testified that BM should have signed the written tenancy agreement, and that BB should not have signed the tenancy agreement.

The tenant testified that the tenancy agreement is not valid because the tenant's name, BB, was misspelled, that BB felt rushed and under duress, that BB could not check with his "housemates", and was told to sign or move out. Additionally, the housemates were available, but not invited or informed.

Filed in evidence by the tenant were bank statements showing a payment of $2,000 for rent sent to the landlord, made on November 1, 2021, and a payment of $1,000 for the December rent, sent on November 29, 2021, the 2021 written tenancy agreement, and a copy of the Notice.

Landlord's response –

GF testified that it was his understanding that BB has lived in the rental unit since 2014 and that he has moved downstairs now. GF testified that the emails filed in evidence indicate that BB has lived in the residential property. GF testified that he met with BB,

they reviewed the written tenancy agreement, 10 days later, BB signed the tenancy agreement, initialling all pages, and there was no indication BB wanted to talk to anyone.

GF said in his profession, he goes over every page of a contract with clients, and that is how he reviewed the tenancy agreement with the tenant, BB. GF said BB was not rushed into signing the tenancy agreement and BB was not under duress in signing the document.

Counsel's written submission in response to the tenant's allegations –

BB's name was misspelled, but BB signed the same and there is no doubt that he is the person it refers to.

The assertion that BB was under duress or was rushed is "farcical" as BB was informed on October 7, 2021 that the rent for the entire house would be $2,000 and the email of October 7, 2021, confirms he was aware that a new lease had to be signed. In addition, the lease was not signed until 9 days after BB made the $2,000 payment for November 2021.

Counsel submitted the landlord seeks past due rent of $4,000 for the rent deficiency from December 2021, through March, 2022.

Tenant's rebuttal –

MB said that BB was not the renter, but he was under duress because he was told he was the renter.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy].*

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Before considering the merits of the Notice, I must consider the tenant's multiple claims as to why the Notice is not valid.

The tenants presented several reasons why the Notice is not valid, why the written tenancy agreement is not valid, and why the monthly rent of $2,000 is not owed.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

At most, one version of events can be true. In weighing the evidence, I must determine the credibility of the witnesses. The often cited test of credibility is set out in *Faryna v Chorny,* [1952] 2 DLR 354 (BCCA) at 357:

> The real test of the truth of the story of a witness… 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 this case, the landlord said a tenancy formed between his son, who is now deceased, and the tenant, BB, for a start date of February 1, 2014. BB denies that a tenancy was created or that he signed that tenancy agreement. The landlord submitted a first page of a written tenancy agreement, which lists BB as the tenant, with the correct spelling, the correct address, a start date of February 1, 2014, and monthly rent of $1,200 for the upper level of the home. The document states that the tenant, BB, could provide

services for the original landlord's business, which was located in the lower level, in lieu of a portion of rent.

Filed in evidence was a copy of a "Business Operations Agreement", in the same style of font size and spacing as the February 1, 2014, tenancy agreement. This document refers to the written tenancy agreement and incorporates BB's ability to provide services in lieu of rent. This document also has BB's signature on the last page.

I find it more likely than not that BB signed the written tenancy agreement for the start date of February 1, 2014, for the upper level, due to the identical style, font and spacing, in both documents referencing the same terms of the tenancy and the business operations. Although BB said he moved out of the premises in 2014, and moved back in in September 2021, I find this assertion neither credible nor believable. The tenant, BB, has presented no evidence to establish that he resided someplace else for 7 years, and the landlords' evidence, the email exchanges, showed the tenant communicating with the landlord about the residential property and the business operations in the summer of 2021. The tenant confirmed in one email he lived downstairs and that applicant, BM, lived upstairs. The tenant, however, failed to provide evidence of the date BM moved in.

As I have found the tenant's evidence not credible, I find none of the tenant's evidence reliable.

There was no proof supplied by the tenants that the landlord communicated with the three other occupants of the residential property.

For all of these reasons, I find that the tenant, BB, was the sole tenant for this tenancy.

As to the tenant's assertion that a misspelled surname invalidated the contract, I find spelling of the tenant's surname and the tenant's listed surname on the written tenancy agreement were pronounced the same phonetically, were different by only two letters, and both are common spellings for the name pronounced the same.

The tenant had the opportunity to make the correction of the document prior to signing it, and he did not, although that name appeared 6 different times on the tenancy agreement. I find the tenant submitted insufficient evidence to demonstrate how a minor clerical error invalidated the terms of the contract.

As to the tenant's claim that he was under duress, as I have found the tenant's evidence not credible or reliable, I do not accept that the tenant's submission that he was under duress when he signed the written tenancy agreement. Apart from that, the only documentary evidence filed by the tenant to support the duress claim was a copy of the written tenancy agreement, which I find is insufficient evidence to show or demonstrate how or why he was under duress. The written tenancy agreement was eight pages, which included a two-page addendum, and the tenant initialled all eight pages. I do not find this demonstrates duress and I therefore reject the tenant's assertion that he was under duress.

To further support that a tenancy was created between the landlord and the tenant, the amount of $2,000 was paid to the landlord from the tenant's bank account for the monthly rent for November 2021.

For these reasons, I find the tenant and the landlord entered into a valid written tenancy agreement for a tenancy start date of November 1, 2021, a monthly rent of $2,000 for the entire residential property, and a security deposit of $1,000 to be paid by the tenant to the landlord.

Finally, the tenant's last defense of the landlord's Notice is that the landlord illegally increased the monthly rent from $1,000 to $2,000. In fact, the evidence shows that the monthly rent under the original tenancy agreement was $1,200.

Under section 43(1)(c) of the Act, a landlord may impose a rent increase up to the amount agreed to by the tenant in writing. The tenant signed the written tenancy agreement agreeing to a monthly rent of $2,000, beginning November 1, 2021, and therefore, I find that there was not an illegal rent increase imposed by the landlord as the tenant agreed in writing to the rent increase.

As a result of all my findings above, I find the tenant, BB, is obligated under the terms of the tenancy agreement to pay the amount of $2,000 per month, beginning November 1, 2021.

I further find that the other listed applicants here are not tenants, as they have been listed as authorized roommates on the written tenancy agreement. As a result, I have excluded the other three applicants from any further consideration in this matter.

Order of Possession –

Upon hearing from the parties, for the reasons already given, I find that the tenant owed the landlord rent when the Notice was issued and that he did not pay the rent deficiency of $1,000 listed on the Notice within five days of receiving the Notice, or at all.

I therefore find the landlord submitted sufficient evidence to support the Notice. As a result, I find the tenancy has ended for the tenant's failure to pay rent owed and the landlord is entitled to gain possession of the rental unit.

I therefore **dismiss** the tenant's application seeking cancellation of the Notice. The tenant ought to have paid the monthly rent, as he did the first month of the tenancy to preserve the tenancy, and file an application disputing the validity of the written tenancy agreement.

I order the tenancy ended on December 15, 2021, the effective date of the Notice.

As such, I find that the landlord is entitled to and I therefore **grant** them an order of possession for the rental unit (**Order**) effective **2 days after service upon the tenant**, pursuant to section 55(1)(b) of the Act. The Order is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the Order after it has been served upon him, this Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

Monetary order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owed but did not pay the outstanding monthly rent listed on the Notice, or $1,000 for December 2021, and additionally, the tenant paid only $1,000 for January, February, and March 2022, each, and owes a total amount of unpaid rent of $4,000 for these four months.

Section 55(1.1) of the Act applies and states:

> 55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**
>
> [Emphasis added]

Pursuant to section 55(1.1) of the Act, I order the tenant to pay the landlord the amount of $4,000, which is the amount of total unpaid monthly rent as of the day of the hearing.

As a result, I grant the landlord a final, legally binding monetary order against the tenant for the amount of his monetary award of $4,000.

Should the tenant fail to pay the landlord this amount without delay, the landlord must serve the tenant to be enforceable. The order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

As I have granted the landlord an order of possession of the rental unit, I dismiss without leave to reapply the remaining claims listed in the tenant’s application, as these matters relate to an ongoing tenancy.

Conclusion

The tenant’s application is dismissed without leave to reapply as I have upheld the landlord’s Notice.

Due to the dismissal of the tenant’s application for dispute resolution, the landlord has been granted an order of possession of the rental unit effective two (2) days after service on the tenant.

The landlord is granted a monetary order in the amount of **$4,000** comprised of unpaid rent owed by the tenant through the date of the hearing.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 30, 2022

Residential Tenancy Branch