



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute CodesOPT

Introduction

This hearing was reconvened by way of conference call in response to the Applicants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession of the rental unit pursuant to section 54;

This matter was filed as an expedited hearing under Rule 10 of the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*"). The Applicant filed this application on September 21, 2022 and a notice of hearing was issued by the Residential Tenancy Branch (the "RTB") on October 12, 2022. The Applicant was required to serve that notice, the application, and all other required evidence in one package to the Respondent, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The original hearing of the Application was held on October 31, 2022 (the "Original Hearing"). The Applicants did not provide the Respondent with a complete Notice of Dispute Resolution package and evidence pursuant to *Rules* 10.2 and 10.3.. The Respondent also alleged that several of the documents were tampered with, obscuring, for example, information about conference access codes. The Respondent was unwilling to proceed with the hearing without full disclosure of the Applicants' information. The Applicants stated that they did not receive a complete evidence package from the Respondent.

Pursuant to Rule 7.8 of the *Rules*, I adjourned the hearing and issued a decision dated October 31, 2022 (the "Interim Decision"). The Interim Decision ordered the Respondent and the Applicants to serve the other party their evidence by registered mail within two (2) days of the date of the letter.

The Interim Decision stated that the parties were not permitted to serve or submit to the RTB any further evidence. The Interim Decision and the Notices of Dispute Resolution Proceeding for this adjourned hearing (the "Adjourned NDRP") scheduled for November 10, 2022 at 11:00 a.m. ("Adjourned Hearing") were served on the parties by the RTB.

The Corporate Respondent (QZ) was represented by the Respondent's Agent (LYM) and her Assistant/Interpreter (CJ) and the Building Manager (BM). The Applicants TWS and OA attended the Original Hearing . The Building Manager (BM) did not attend the Adjourned

Hearing. At the Adjourned Hearing, the Respondent's Agent (LYM) and her assistant/interpreter (CJ) (the "Respondent") and the Applicant, TWS and her fiancée and co-tenant on the Tenancy Agreement, OA, were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue 1: Aliases used by Applicants on the Tenancy Agreement

On the Tenancy Agreement the Applicants used aliases. Applicant TWS's ID shows her name as "TW". She used the alias "TS" on the application for tenancy and the tenancy agreement. The Co-Applicant on the Tenancy Agreement, OA, also used an alias "TS". To distinguish between the aliases, TWS's alias will be referenced as TS₁ and OA's alias will be TS₂.

Preliminary Issue 2: Service of Documents

The Respondent stated that as of the date of the hearing, they had not yet received the Applicants' evidence package.

The Applicant, TWS, stated she mailed the evidence package to the Respondent on Monday, November 7, 2022 and did not explain why she failed to follow the order set out in the Interim Decision.

Given the Applicant's late service of the evidence package to the Respondent, the Respondent was not able to review and respond to the evidence. Although the Respondent was not given this opportunity by the Applicants, I found that I could still consider the Respondent's evidence, as is relevant to the Applicants' application for an Order of Possession.

As stated previously, the application was filed as an expedited hearing for an order of possession for the Applicant. Balancing the seriousness of the issue with the Applicants failure to provide the Respondent their evidence as directed in the Interim Decision, I proceeded with the hearing. I advise the Applicant her documentary evidence is excluded and will not be considered. The Applicant was given the opportunity to provide her evidence orally.

Preliminary Issue 3: Applicant disconnected from conference all

The Applicant, TWS, and OA disconnected from the conference call at 11:28 and had to redial in. The conference call was put on hold until they were able to re-enter the conference.

Issues to be Decided

Is the Applicant entitled to:

- 1) an order to allow access to or from the rental unit or site for the tenants or the tenants' guests?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting September 20, 2022 ending August 30, 2021. Monthly rent is \$3700.00 and is payable on the first of each month. The Applicants paid the Respondent a security deposit of \$1850.00. The Respondent never cashed the deposit.

Respondent

On Friday, September 16, 2022, the Respondent, the Respondent's sister, and the Respondent's Agent met with the Applicants at the rental unit. TWS told the Respondent that she was a teacher with the school district. She, her fiancée, and her daughter were looking for a rental unit.

A tenancy agreement was signed on Friday, September 16, 2022. The Applicants represented themselves as TS₁ and TS₂ on the application for tenancy and on the tenancy agreement. TS₁ provided picture identification identifying her as TW. Although the name on the tenancy agreement, differed from the ID presented, the Respondent was told the Applicant's full name was "TWS"- abbreviated to TS₁ on the application and on the tenancy agreement. OA wrote his legal name as TS₂ and did not have ID with him but the Respondents were assured ID would be forthcoming. The Respondent stated that she repeatedly had to ask TWS to send OA's identification. When finally provided the name on the ID was did not match the name on the tenancy agreement.

The Respondent stated, in good faith, she accepted that TWS was a teacher and gave the Applicants keys and fobs to the rental unit on Friday, September 16, 2022. The occupancy date on the tenancy agreement was set for September 20, 2022. Although the date of possession was September 20, 2022 the Applicants moved in on September 18, 2022, without the permission of the Respondent.

TWS gave the Respondent a cheque for the security deposit in the amount of \$1850.00; a prorated cheque for rent through the end of September 2022 for \$1233.00, and a series of post-dated cheques for rent October 1 through December 31, 2022, in the amount of \$3700.00 per month. The name on the cheque was TW and the Respondent noted that the signatures on each cheque differed. The Respondent submitted the cheques into evidence.

After the weekend, the Respondent contacted the district school board to confirm that TWS was employed as a teacher. The school board told the Respondent that no one by the name TS₁ or TWS or TW worked in the district.

When the Respondent finally received the second Applicant's ID, the name on the ID did not match the name on the tenancy application and tenancy agreement. Concerned about the true identity of the Applicants and the false information about employment, the Respondent had the strata re-program the fobs that allowed access to the building. When OA tried to access the building, he could not and this led to a confrontation with the concierge, the police called, and a police file started. The Respondent testified that the police warned her not to meet with the Applicants alone. The police file number was submitted into evidence.

The Respondent packed up the Applicants' belongings and placed the belongings in storage for the Applicants to pick up. The Applicants have been told repeatedly that they can arrange a time with the building manager to pick up their belongings.

Applicants

TWS stated she met with the Respondent on Friday, September 16, 2022 and signed the 'lease agreement' that took effect September 21, 2022. She states that she took possession on September 21 and on September 22, 2022 she went down to the lobby because her fiancée was downstairs and unable to get into the building because his fob was not working.

TWS states that she and OA have not collected their belongings as they are awaiting the outcome of the hearing. TWS states that her son died and in the rental unit, there was \$15,000.00 cash that belongs to her son.

The Applicant argues that she entered into a tenancy agreement with the Respondent and wants their belongings placed back in the rental unit and access to the building and the rental unit restored.

In the hearing, I asked TWS about the discrepancy between the names used on the tenancy agreement and the identifications provided. TWS stated that TW was her "original name" and that "S" was her middle name and then stated it was a family name and that the names she used were unimportant.

I asked the TWS if she had any legal documents with the name TWS or TS on it: BC identity card; driver's license or marriage certificate. TWS told me that she does not drive, does not have BC ID, and has never been married. The only identification that she has is the photo ID she provided to the Respondent when she signed the tenancy agreement.

When I asked TWS why OA, the second tenant listed on the agreement, was identified as "TS₂" on the tenancy agreement and did not provide his legal name, the TWS became upset and

agitated – again telling me that it was not my concern. TWS told me that she did not have to nor would she explain the difference in names to me – it was irrelevant to the order of possession. TWS offered no explanation for why she said she was employed as a teacher.

AO testified that TWS had lost her son and a lot of the belongings in the rental unit belonged to her son. AO stated that in addition to being TWS's fiancée he is also her "personal security" and they "work together". He stated he has a separate rental unit in a different municipality and that TWS "rented the rental unit for her family". TWS wanted to rent in a building with a secure entrance for personal safety reasons. She is "left at risk" being denied access to secure property.

OA testified that TWS used an alias because she fears for her safety given the manner of her son's death and is reluctant to provide her real identity to people of Asian descent because of gang activity in the lower mainland. OA further stated that TWS does not trust the authorities, especially police, because of past involvement with the police when she lived in a different province.

Analysis

Rule of Procedure 6.6 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, in this case, the Applicant.

Section 91 of the Act provides that tenancy agreements are subject to common law that applies to contracts in general. Section 91 provides:

- 91** Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Requirements for tenancy agreements

- 13** (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:
- (a) the standard terms;
 - (b) the correct legal names of the landlord and tenant;**

The #RTB-1, "Residential Tenancy Agreement" on page 1 states:

RESIDENTIAL TENANCY AGREEMENT between: use full, correct legal name(s)

A tenancy agreement is a legal document [a contract] and the signatures verify that the information provided in the tenancy agreement is the truth to the best of the parties' knowledge. On Friday, September 16, 2022 the Applicants completed an application for tenancy and signed a tenancy agreement with the Respondent.

On the application for tenancy and on the tenancy agreement the Applicant made a number of declarations . She stated her correct legal name was TS₁ and the correct legal name of her fiancée was TS₂. These representations were misleading in light of evidence which, to the contrary, showed the names used on the application and tenancy agreement were not the Applicants "correct legal names".

On the application for tenancy, the Applicant made representation to the effect that she was employed for the [City] schoolboard and had worked in the District for 9 years, 8 months. I accept as fact she told the Respondent that she was a teacher. The background check provided accurate evidence that the Applicant was, in fact, not employed by the District in any capacity.

OA testified using TWS's correct legal name would put her life in jeopardy from Asian gangs and she was reluctant to provide her real identity to anyone of Asian descent. OA's explanation for not using correct legal names on the application and on the tenancy agreement conflicts with the testimony and evidence that TWS provided her photo ID, her alleged legal ID, at the time of application and the signing of the tenancy agreement. Further, the Respondent is Asian, so if the Applicant was concerned about providing her true identity to persons of Asian descent it is counterintuitive she would enter into a tenancy agreement and provide her ID to someone who is Asian.

Based on the evidence and testimony I prefer the evidence of the Respondent over the oral testimony provided by the Applicant. The evidence supports the Respondent entered into the contract in utmost good faith. I conclude the Applicant and her co-applicant deliberately obfuscated their real identities to mislead and deceive the Respondent into signing the tenancy agreement.

In the absence of other evidence to support a credible alternative explanation, I find that although a tenancy agreement was signed on the 16th of September 2022, the Applicants failed to use their "correct legal names" as required by s. 13 of the Act; therefore, no legal tenancy agreement binds the Respondent and Applicant.

The Applicant's application for an order of possession is dismissed without leave to reapply.

Conclusion

The Applicants' application for an order of possession pursuant to s. 54 of the Act 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: November 18, 2022

Residential Tenancy Branch