



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On 8 March 2023, the landlord applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlord asks me for the following orders against the tenant.

1. Exclusive possession of the rental unit in favour of the landlord.
2. Payment of \$12,600.00 of unpaid rent.
3. Reimbursement for the \$100.00 filing fee for this application.

The landlord appeared at the hearing on 31 March 2023 by way of a corporate agent. The tenant also appeared.

Issues to be Decided

During the hearing, the tenant conceded that the tenancy should end at 1300 hours on 30 April 2023. So, I do not have to decide whether the landlord is entitled to exclusive possession of the rental unit: the tenant has agreed that the landlord is. The issues that remain for me to decide are as follows:

Does the tenant owe \$12,600.00 to the landlord for unpaid rent?

Should the tenant have to reimburse the landlord for the cost of filing this application?

Preliminary Issue

At the commencement of the hearing, the tenant asked to adjourn (or, postpone) the hearing.

The tenant's basis for this request was:

1. the tenant did not have enough time to prepare for the hearing, as they did not learn of this hearing until 8 March;
2. the tenant had documents that were important for me to consider as part of this hearing, but which the tenant hadn't had time to compile; and
3. the tenant had important witnesses to call as part of this hearing, but who weren't presently available.

I denied the tenant's request to postpone this hearing. This is why I did so.

Did the tenant have sufficient notice of this hearing?

The tenant complained that they did not learn of this hearing until 8 March. The implication was that the tenant, therefore, did not have enough time to prepare.

Section 59 (3) of the *Residential Tenancy Act* [the 'Act'] requires that an applicant (in this case, the landlord) must serve the 'Notice of Dispute Resolution Proceeding Package' on the respondent (here, the tenant) within three days of receiving it from the RTB. This package provides the respondent with notice of when the hearing of the dispute will take place, and how to participate.

The RTB sent this package to the landlord on 8 March. The landlord sent it to the tenant on the same day. And the tenant agreed that they received it on the same day.

I found that the tenant could not have been notified any sooner of the date of this hearing.

Did the tenant need more time to prepare documents for this hearing?

I asked the tenant about the nature of the documents they had wanted me to consider. The tenant told me that none of these documents would show that they had paid the rent that the landlord alleged they had not paid. Rather, the tenant said that the documents would show that there was a 'different deal' regarding the tenancy. That is, a

deal whereby the tenant did not have to pay rent. When I pressed the tenant on what these documents might be, they conceded that there weren't actually any documents of that 'deal': the 'deal' was a verbal arrangement.

Accordingly, I found that even if the tenant had more time to produce such documents, none of them would be relevant to the issues before me, *i.e.* whether the tenant had paid their rent.

Did the tenant need more time to secure the attendance of witnesses for this hearing?

I asked the tenant about the witnesses they wanted to call as part of this hearing, but hadn't been able to track down. They told me that there were several witnesses, but that they could not remember the names of most.

They could, however, recall the names of two witnesses.

One witness whose name they could recall could tell me about non-emergency repairs that the tenant had made to the unit. As with the documents, this witness' evidence was not relevant to the issues I must decide.

The other witness whose name the tenant could recall had the same name as the landlord. But the tenant told me that that witness was the *son* of the landlord [the 'Son']. And it was with the Son that the tenant made a verbal agreement to not pay rent.

I asked the tenant what they had done to track down the Son for this hearing. The tenant told me that they had telephoned the Son and sent him text messages. Since 14 March, the tenant estimated that they had probably called the Son six or seven times, but that the Son never picked up and never returned the calls. The tenant also said that they had texted the Son four or five times. The tenant said that they had received some response to those texts. But, significantly, the tenant told me that when they texted the Son about this hearing and the date on which it was happening, the tenant never had a response.

During the hearing, the tenant provided the telephone number for the Son with the same name as the landlord. I called this number *via* the conference-call system, but there was no answer. And then the landlord's agent noted that the number the tenant had

provided was the same telephone number that the agent had for their client. That is, the number was the number of the landlord.

And so I found that, based on the failed attempts by the tenant to contact this witness about the hearing over the past few weeks, it was unlikely that the witness was going to respond to further attempts if I gave the tenant more time to contact them. Also, I found that, based on the phone number the tenant provided for this witness, and the evidence of the landlord that that number was, in fact, the landlord's number, it was probable that the 'witness' the tenant was hoping to call was, in fact, the applicant.

Background and Evidence

Both parties agreed that the tenancy began in June 2020, and that the tenancy agreement was unwritten.

The landlord said that rent was \$1,800.00 each month, due on the first day of each month. The tenant did not offer any evidence to dispute this.

The landlord then told me that in September last year, the tenant failed to pay the full amount of rent. Instead, the tenant paid only \$1,300.00 for rent. The tenant agreed with this testimony.

The landlord also said that from October 2022, the tenant has never paid any rent. The tenant agreed with this testimony, also.

The tenant, however, told me that he had not paid rent because the landlord no longer required him to do so. The tenant said that the Son told the tenant that they no longer needed to pay rent because the Son was using the property for construction. The tenant claimed that they had a conversation with the Son about this arrangement, and that conversation amended the tenancy agreement such that the tenant no longer had to pay rent.

The tenant had no details about what this construction was; why it was continuing for months at a time; or why the landlord would offer the tenant to reside at the unit rent-free as a result of the construction.

Analysis

Does the tenant owe \$12,600.00 to the landlord for unpaid rent?

The parties agree that the landlord has not received rent since October 2022, which makes a total of six months. Also, the parties agree that rent for September was \$500.00 less than the amount previously agreed upon.

The landlord argues that it is improbable that they would have agreed to amend the tenancy agreement such that the tenant no longer had to pay rent. I agree that it is improbable.

And importantly, the individual with whom the tenant claims such an agreement was made appears to have been the landlord themselves: the name of the Son and the telephone number of the Son as provided by the tenant are, I accept, identical to those of the landlord. And the landlord tells me that no such agreement was made.

Conclusion

I find that the tenant was \$500.00 short for September rent. And I find that the tenant paid no rent for the following six months. I accept that the amount of rent that had been agreed upon in June 2020 remained unchanged since then. And so the tenant owes the landlord a total of \$11,300.00 [\$1,800 x 6, plus \$500].

I therefore order that the tenant pay to the landlord \$11,300.00 for unpaid rent *per* section 55 (1.1) of the Act.

Also, as the landlord succeeded in this application, I order that the tenant must reimburse the landlord \$100.00 for the filing fee, per section 72 (1) of the Act.

The landlord must serve this order on the tenant as soon as possible. If the tenant does not comply with my order, then the landlord may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlord can enforce my order as an order of that court.

As the tenant has conceded that the tenancy should end at the end of this month, I make an Order of Possession in favour of the landlord. This order is effective at 1300 hours on 30 April 2023. If the tenant or any occupant of the rental unit fails to comply

with my order, then the landlord can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 6 April 2023

Residential Tenancy Branch