



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Dispute Codes: OPR, OPC, MNR, MNDC, FF

Introduction:

This hearing was convened upon the application of the landlords seeking orders as follows:

1. An order of Possession for unpaid rent;
2. An Order of Possession for cause;
3. A monetary order for unpaid rent;
4. A monetary order for damage or compensation; and
5. A monetary order to recover the filing fees for the cost of this application.

All parties appeared and gave evidence under oath.

Background and Evidence

The evidence of the parties is that this tenant used to own the rental property and he sold in sometime in 2005 to another person who assigned the sale to this landlord. The evidence of the landlord is that after he purchased the property the owner became his tenant on a verbal tenancy arrangement. On May 7 and 8, 2007 the parties entered into a written Tenancy Agreement for a fixed term tenancy commencing March 1, 2007 ending February 28, 2008 and continuing on a month-to-month basis thereafter. The agreement sets out that the rent, due on the 1st day of each month was \$2,500.00 per month. In evidence the landlord submitted copies of the post-dated rent cheques issued by the tenant.

The landlord testified that the tenant's cheques were honoured up to December 2007 at which time the tenant advised the landlord not to cash his post-dated cheques. The landlord testified that the tenant kept promising to pay the rent but, in addition to missing

the December 2007 payment, he also missed the payments for January, February and March 2008. The landlord claims \$10,000.00 in rental arrears for this period.

The landlord testified that because of the tenant's financial difficulties he agreed to a rental reduction effective April 2008 at which time the rent was reduced to \$1,600.00 per month. However, the landlord testified that the tenant still did not make full payments in April, May, June or July 2008 in the lower amount. The landlord testified that the tenant did pay \$800.00 on March 18, 2008, \$800.00 on May 21, 2008 and \$800.00 on July 5, 2008. In evidence the landlord submits the tenant's cheques in evidence and pointed out that the tenant noted on cheque 082 dated March 18, 2008 that the payment was for a "Deposit April 1/08 Rent Balance owed \$800.00". The landlord claims rental arrears in the sum of \$3,200.00 for this period.

The landlords testified that he had to pay a \$4,540.00 fee levied by the Corporation of the Township of Langley for an inspection commenced as a result of suspected unauthorized activity on the rental property. The landlord testified that the Public Safety Inspection Team contacted him to advise that they suspected the rental property was a grow operation. The authorities invited the landlord to attend the inspection with them scheduled for the next day. The landlord testified that he contacted the tenant to advise him about the impending inspection. The landlord attended with the authorities and while no plants were found there was other evidence of a grow operation. The inspection permit issued was submitted in evidence which notes:

This permit is issued to collect fees resulting from a inspection performed by the Township of Langley's Public Safety Inspection Team. Building cleaned up at time of inspection. No further inspections required. The fees under Bylaw 4537 apply.

(reproduced as written)

The landlord is seeking recovery of the \$4,540.00 fee.

The landlord testified that he believes the tenant vacated the rental property in or about August 2008 but the landlord is not certain because he never received a notice from the tenant that he wished to end the tenancy. The landlord claims rent for July and August 2008 in the sum of \$1,600.00 for each month.

The landlord testified that the total rental arrears sought are \$16,400.00 plus the inspection fee of \$4,540.00 for a total claim of \$20,940.00.

The tenant says the landlord knew the property was a grow operation because he used to own the property and he noted this fact on the disclosure statement issued at the time of the sale. The disclosure statement was submitted in evidence. The tenant testified that after he sold the property he agreed to manage the property and collect rents from other tenants for the purchaser. The tenant says he did not sell the property to this landlord and believes the sale must have been assigned to this landlord. The tenant testified that all of his agreements were made verbally with the landlord and/or the previous purchaser of the property. The tenant testified he was not paid by the landlord for his management duties. The tenant says he has not lived in the rental unit for over 2 years. The tenant says that in addition to the payments the landlord says he made towards the rental arrears he also made a payment of \$1,000.00 on December 19, 2007. The tenant submitted a copy of his cheque No. 072 as proof of that payment,

The tenant says he never gave notice to vacate the property because he was not a tenant and he did not live there and hasn't lived there for approximately 2 years. With respect to the signed tenancy agreement submitted in evidence the tenant says he agrees he signed that tenancy agreement but says the tenancy ended at the end of the fixed term that is in February 2008 and he had no idea it was to continue on a month to month basis after that time.

Analysis and Findings

While this tenancy may have begun on a verbal basis prior to the signing of a written tenancy agreement, both parties agree that they did sign a one year fixed term tenancy on May 7 and 8, 2007. This agreement was submitted in evidence and it sets the term

to end on February 28, 2008 and provides for rent of \$2,500.00 per month rent payable on the 1st of each month. The landlord testified that the tenant did not pay the \$2,500.00 rent for December 2007, January, February and March 2008. The tenant says he paid \$1,000.00 toward the rental arrears on December 19, 2007. As evidence the tenant submitted a cheque issued to the landlord for that sum but there is no evidence that the cheque is a cancelled cheque or that it was cashed by the landlord. The landlord testified that he did not receive that payment and the tenant produced no further evidence of that payment or any other payments. I therefore accept the landlord's evidence that he did not pay rent for this time period and I will award the landlord the sum of \$10,000.00 in rental arrears for this period.

With respect to the tenant's argument that he did not live in the rental unit and was not a tenant, I find that the evidence being the signed tenancy agreement and the rental payments show otherwise. The tenant's own cancelled cheques state they are for rental payments. Whether the tenant chose to live in the rental unit or not, whether he sublet to others or not, he did sign a tenancy agreement, he made rental payments and I find therefore that there was a tenancy between these parties.

The parties agree that by way of a verbal agreement the rent was lowered effective April 1, 2008 to \$1,600.00 per month. The landlord says the tenant paid half that sum for the months of March, May and July 2008 resulting in further rental arrears of \$2,400.00. I find that the cheques submitted by the landlord as issued by the tenant are evidence of the \$800.00 per month partial rental payments and, based on the evidence of both parties that the rent was to be \$1,600.00 per month, I find that the tenant owes arrears of \$3,200.00 for this period.

The landlord testified that the tenant did not give notice of his intention to vacate in writing or at all. The landlord believes the tenant vacated the rental unit in or about late August 2008. The landlord therefore seeks rent of \$1,600.00 for August and September 2008 in the total sum of \$3,200.00. While the tenant claims he was not a tenant I have already found that he was and he has produced no evidence of having supplied the landlord with written notice to vacate and continues to state he was not a tenant. The landlord testified that he did not receive this notice. I therefore find that the tenant owes

the landlord rent for the months of August and September in the total amount of \$3,200.00.

With respect to the fees paid for the inspection of the potential grow operations. Based on the evidence of the respondent that the property was a grow operation when he owned it. I find it is reasonable and probable that the City officials had cause to inspect the rental unit as a potential grow operation while the respondent occupied the property as a tenant. I therefore find he is responsible for the fee of \$4,540.00.

Conclusion

The claims for Orders of Possession are dismissed as the tenancy has now ended.

I will make a monetary award in favour of the landlord in the sum of \$20,940.00 plus \$100.00 to recover the cost of making this application.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.