



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel the 10 day Notice to End Tenancy dated June 1, 2016

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$21,000 for unpaid rent
- c. An order to retain the security deposit

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was personally served on the Tenants on June 1, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 1, 2016?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?

d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties were friends at one time. Unfortunately, the relationship has deteriorated with each party making claims against the other.

The landlord produced a construction agreement dated June 15, 2010 between SH & E Ltd. and OC in which the company owned by the landlord agreed with the company owned by the Tenant that the tenant's company would build 15 houses. The houses were not completed. The Tenant blames the lack of funds by the landlord for this failure. The landlord blames the tenant.

The tenant was working for the developer PVH as a Realtor. He facilitated the sale of lots to the landlord's company. This matter is in the Courts. The landlord testified this dispute has nothing to do with the residential tenancy dispute.

The subject property is owned by the landlord personally and is not owned by his company.

In April 2014 the tenants moved into the property which is the subject of this dispute. The landlord testified the parties had orally agreed the tenants would pay rent of \$1500 per month payable in advance on the first day of each month. The tenants had the right to purchase the property within the next 4 months as the tenant was waiting for money coming from overseas. The landlord testified the tenants failed to pay the rent for 2014 and when asked they responded by saying they were still waiting for the money coming from overseas. The tenants failed to proceed with the purchase and sale of the property but continue to live in the rental unit.

The landlord testified the tenants failed to pay the rent of \$1500 a month payment for the months of May, June, July, August, September, October, November and December 2014. The tenants also failed to pay the rent for February 2015 and for January 2016, February 2016, March 2016, June 2016 and July 2016. The sum of \$21,000 remains owing. The tenants dispute this accounting stating that some of the months claimed by the landlord were paid for. The tenant testified that he just returned from overseas yesterday evening and was not able to provide the cancelled cheques.

The tenants also claim the landlord owes them money for appliances installed in the rental unit. The tenant testified he purchased appliances that cost over \$8000 for the

property in question. The landlord testified he agreed the tenants could take those appliances with them when they left.

Finally, the tenant testified the landlord owes him money for work done on other homes. The landlord denies this.

Preliminary Matter:

The tenants submit this is not a residential tenancy matter and therefore the Residential Tenancy Branch does not have jurisdiction. They submit it is a purchase and sale of the property. After carefully considering the disputed evidence of the parties I determined the Residential Tenancy Act applies for the following reasons:

- I determined the parties agreed the rent would be \$1500 per month and that the tenants had the right to purchase the property within the first 4 months. The tenants failed to come up with the money and the purchase of the property never proceeded but this does not negate the presence of a tenancy agreement.
- There is no evidence that a portion of the \$1500 paid would be applied to the purchase price which might have removed this from a residential tenancy matter..
- The tenants made a number of \$1500 payments including 11 payments in 2015 and 2 payments in 2016. The tenants also provided the landlord with a \$1500 cheque for June 2016 but the landlord has not been able to cash it because of insufficient funds.
- The claims the tenants are making involves claims made by their respective companies against each other involving the construction of the homes in the construction agreement. The parties are different. Even if the tenants' allegations are correct it does not give them the right to withhold the rent.

In summary I determined this is a residential tenancy matter.

Tenants' Application:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy based on non-payment of rent. I determined the tenants owe rent dating back to 2014 that total \$21,000. I determined the landlord has used the approved form. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' application to set aside the Notice to End Tenancy has been dismissed. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. The landlord was prepared to permit the tenants to continue to reside in the rental unit until the end of August. As a result I set the effective date of the Order for Possession for August 31, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent and the sum of \$21,000 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I dismissed the claim for assumed property damage with liberty to re-apply as that claim is premature. I granted the landlord a monetary order in the sum of \$21,000 plus the sum of \$100 in respect of the filing fee for a total of \$21,100.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In summary I dismissed the Tenants' application to cancel the 10 day Notice to End Tenancy. I granted an Order for Possession effective August 31, 2016. I ordered that the Tenants pay to the Landlord the sum of \$21,100.

The tenants allege they have claims against the landlord. The tenants will have to make those claims in the courts if they relate to construction issues and in the

residential tenancy arbitration process if they relate to residential tenancy matters. Those matters were not before me in this hearing and no determination has been made..

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: July 11, 2016

Residential Tenancy Branch