



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P & E ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, DRI
For the landlord: OPR, OPM, OPB, MNRL, MNDL, FFL

Introduction

This decision is in respect of the tenant's and landlord's applications for dispute resolution under the *Residential Tenancy Act* (the "Act"), filed on December 7, 2018 and December 19, 2018, respectively.

The tenant sought the following remedies: (1) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"); and, (2) an order pertaining to a dispute of a rent increase.

The landlord sought the following remedies:

1. an order of possession for unpaid rent;
2. an order of possession for a mutual agreement to end tenancy;
3. an order of possession for the breach of a vacate clause;
4. a monetary order for unpaid rent;
5. a monetary order for damage or compensation; and,
6. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on January 7, 2019, and the landlord, the tenant, and the tenant's legal advocate attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Preliminary Issue: Landlord's Application

The landlord advised at the start of the hearing that he had an application scheduled for arbitration on January 31, 2018, the substance of which was directly related to the tenant's application. After reviewing the landlord's file, I agreed that both his and the tenant's application would be heard in the same dispute resolution hearing. As such, I took conduct of the landlord's application and both his, and the tenant's applications, are dealt with in this decision.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order pertaining to a disputed rent increase?
3. If the tenant is not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession for unpaid rent, for a mutual agreement to end tenancy, or for a breach of a vacate clause?
4. Is the landlord entitled to a monetary order for unpaid rent?
5. Is the landlord entitled to a monetary order for compensation or damage?
6. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenant moved into the rental unit sometime in May 2018, at first without the landlord's knowledge. Apparently, the tenant that was living in the rental unit (she has since been evicted) sublet the rental unit to the tenant. The landlord, being a reasonable and helpful landlord, agreed to let the tenant remain in the rental unit on a temporary basis in for reduced rent in exchange for painting services.

The former tenant, now having been evicted, left just the tenant in the rental unit. The tenant had "no place to go" so the landlord allowed him to remain. The former tenant was paying \$900.00 a month in rent, but the landlord allowed the tenant to stay for \$400.00 for June, July, August and September 2018. Again, on the basis of reduced rent in exchange for painting.

The reduced rent then rose to \$700.00 in October 2018, which reflected that the tenant had not yet finished all the painting that he was supposed to do. Insofar as the landlord was concerned, rent was always \$900.00. He submitted into evidence a document in which he argued that the tenant and the former tenant agreed that rent was \$900.00. It

was the landlord's understanding that once the painting was completed the tenant would leave. A copy of a handwritten "temporary tenancy agreement" was submitted into evidence. The agreement referenced rent of \$400.00 for each of the four months and then \$700.00 for October 2018. There is no other information that establishes rent as being \$900.00 or any terms regarding the term of the tenancy.

Regarding the landlord's claim for compensation, he testified that the following amounts are owing: (1) \$400.00 for June 2018; (2) \$300.00 for July 2018; (3) \$900.00 for November 2018; (4) \$900.00 for December 2018; and (5) \$900.00 for January 2019.

The landlord testified that the Notice (a copy of which was submitted into evidence) was served on the tenant in-person on December 3, 2018, and service was witnessed by one "K.E." In his final submissions the landlord stated that "all we want is money and our rental unit back."

The tenant, through his advocate, testified that it was his understanding that monthly rent was \$700.00. Originally, rent was \$800.00, but it was argued that a new tenancy agreement was formed that established rent at \$700.00. He acknowledged that he owed rent in the amount of \$300.00 for October 2018 and \$700.00 for December 2018. He also testified that he had \$1,000.00 in cash that he offered to the landlord for rent.

The tenant testified that as far as he is concerned, monthly rent is \$700.00. I asked him why he had not paid rent for January 2019 to which he advised that the arbitration hearing was scheduled so close to the date that rent was due that he withheld rent until I, the arbitrator, made a decision as to what rent actually is.

In rebuttal, the landlord testified that he visited the tenant on January 3, 2019 in order to collect rent. The tenant was at the rental unit and told the landlord that he did not have the rent on him and that the landlord "needs to make an appointment to pay the rent" because the rent was apparently in the bank. The landlord commented that the rent should be available (that is, "ready") when the landlord requests it. He commented that he did not cash a \$400.00 cheque from June 2018 because he was trying to be a good landlord.

In final submissions, the tenant testified that while there is a lockbox in which rent can be put, the tenant "only deals in cash" and that putting it in the lockbox is unsecure. Nor can he obtain a receipt by putting cash in the box.

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. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution, which the tenant did.

The landlord testified, and provided documentary evidence to support their submission, that the tenants did not pay rent when it was due, and did not pay rent in full for November 2018, December 2018, or January 2019. There is partial unpaid rent in the amounts of \$400.00 for June 2018 and \$300.00 for October 2018—the tenant acknowledged owing the \$300.00 for October and \$700.00 (but not \$900.00) for December 2018. He did not dispute that he owes rent for November 2018.

There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent. While the parties disagreed on whether the monthly rent was \$900.00—undoubtedly caused by a very poorly drafted tenancy agreement—the tenant testified and acknowledged that insofar as he was, and is, aware, monthly rent is \$700.00. In his mind, rent was always \$700.00. As such, he accepted his legal obligation to pay rent in the amount of \$700.00, which he acknowledged not paying for December 2018 or for January 2019. The proximity between when rent is due and when a dispute resolution hearing is scheduled has no legal effect on a tenant's legal obligation to pay rent.

Given that the tenant acknowledges not paying rent for December 2018 and January 2019 and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for an order of possession for unpaid rent pursuant to section 55 of the Act.

Regarding the landlord's claim for compensation, I do not find that the handwritten tenancy agreement establishes that monthly rent is \$900.00. As such, I am only

prepared to accept that the tenant owes unpaid rent for October in the amount of \$300.00, and unpaid rent (in the amount of \$700.00) for November 2018 through January 2019, inclusive, in the amount of \$2,100.00. The landlord is not entitled to claim compensation for an uncashed cheque.

I grant the landlord a monetary award of \$100.00 for recovery of the filing fee.

As the landlord's application for an order of possession was successful, I need not consider the remainder of his application in respect of the other orders of possession.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$2,500.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 7, 2019

Residential Tenancy Branch