



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Preliminary Matters

The landlord's agent (the landlord) testified that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) was handed to the tenant by the landlord's employee on March 1, 2012. The landlord submitted a handwritten, undated statement from his employee to this effect. The tenant denied that the landlord's employee handed him the 1 Month Notice. He gave sworn testimony that the first time he saw the 1 Month Notice was when he received the landlord's dispute resolution hearing package for this hearing sent by the landlord by registered mail on April 29, 2012.

The tenant noted that the issue of the lack of delivery of the landlord's 1 Month Notice had been addressed by another Dispute Resolution Officer (DRO) at an earlier hearing regarding the landlord's earlier application for an Order of Possession (Residential Tenancy Branch File 789919). The landlord failed to provide any indication in his written evidence for the current application of the existence of a previous decision of a DRO with respect to this matter. However, the landlord confirmed that a decision was made on April 23, 2012 by another DRO to dismiss his attempt to obtain an Order of Possession based on the same 1 Month Notice issued on March 1, 2012 with leave to reapply. The landlord testified that he applied for dispute resolution to obtain an Order of Possession based on the 1 Month Notice after he obtained a signed written statement from his employee who handed the 1 Month Notice to the tenant.

The service of the 1 Month Notice remains at issue, as it had at the April 23, 2012 hearing. Knowing that the tenant had disputed receiving the 1 Month Notice when the landlord's previous application was heard on April 23, 2012, I believe that the landlord should have taken more effective measures to demonstrate that the 1 Month Notice was served to the tenant. Although the landlord submitted written evidence from his employee, this statement was undated and was not a sworn affidavit. The landlord did

not ensure that his employee attend this hearing to give sworn testimony to confirm the authenticity of the undated written evidence attributed to him by the landlord.

Under these circumstances, I find that the best evidence submitted with respect to the service of the 1 Month Notice is the tenant's sworn testimony that he did not receive the 1 Month Notice from the landlord's employee. I also accept the tenant's sworn testimony that he did not actually receive the 1 Month Notice until he found a copy of it included in the landlord's dispute resolution hearing package in early May 2012. In accordance with section 90 of the *Act*, I find that the landlord's 1 Month Notice was deemed to have been served to the tenant on May 4, 2012, the fifth day after its registered mailing on April 29, 2012.

The tenant confirmed that he received the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 29, 2012. At the hearing, I reviewed the contents of the landlord's amended application for dispute resolution. In the landlord's amended application, the landlord added an amount of monetary award requested by replacing "0.00" with "2540" beside a note stating "Rent 2440 - Late 100." However, the landlord did not amend the "Dispute Code" which continued to state that the sole cause for the landlord's application was for an Order of Possession for cause.

The principles of natural justice require a respondent to know the case against him/her so that a proper opportunity is provided to address the applicant's claim. In this case, it was important to determine whether the tenant was aware that the landlord intended to seek a monetary award for unpaid rent in addition to the Order of Possession for cause cited in both the earlier application and the original version of the landlord's current application. The landlord said that he provided the tenant with a copy of the amended application, but the tenant denied the landlord's assertion. To clarify this matter, I asked the tenant to review the contents of the landlord's dispute resolution hearing package to attempt to confirm which applications he received. The tenant was able to locate the Notice of a Dispute Resolution Hearing issued by the RTB on April 27, 2012, alerting him as to the time and date of the current hearing. He said that he also had copies of the landlord's written evidence, including the written statement from the landlord's employee and a copy of the 1 Month Notice. He testified that the only copy of the Landlord's Application for Dispute Resolution he had received in this package was a copy of the landlord's application for RTB File 789919, the landlord's earlier application. He could not locate either the landlord's original application for dispute resolution for the current hearing or the landlord's amended application.

The tenant attended this hearing and was expecting that this hearing would consider the landlord's request to end this tenancy based on the 1 Month Notice and obtain an Order

of Possession. For this reason, I accept that the landlord's service of the dispute resolution hearing package by registered mail occurred in accordance with the *Act*. However, I do not find that the landlord has adequately served the tenant with notice that he would be attempting at this hearing to obtain a monetary award for unpaid rent. The tenant has not been given a proper opportunity to address the landlord's inadequate attempt to include a monetary element to his application for dispute resolution. As I do not consider the tenant to have been adequately served with notice that the landlord was intending to include a monetary component to his current application for dispute resolution, I dismiss the landlord's request for a monetary award for unpaid rent with leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

This periodic tenancy for an unauthorized basement unit in a rental building commenced on December 1, 2007. Monthly rent is currently set at \$610.00, payable on the first of each month. The landlord continues to hold a \$280.00 security deposit for this tenancy.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by March 30, 2012. The 1 Month Notice cited the reason for ending this tenancy for cause as:

Rental unit/site must be vacated to comply with a government order.

The landlord entered into written evidence a number of letters from the municipality, including a January 31, 2012 ORDER requiring the landlord to comply with the municipal requirement that the landlord cease using the three unauthorized suites in the basement of this rental property.

Although the tenant was insistent that he did not receive the 1 Month Notice until early May 2012, he did not dispute the landlord's claim that the landlord needed this tenancy to end in order to comply with the ongoing and long-standing efforts of the municipality to close the unauthorized rental units in the basement of this rental property. He testified that the other two tenants in the basement have already vacated the premises. He said that he was involved in discussions with assisted housing officials to relocate him to alternate assisted accommodations. He testified that he was hopeful that these initiatives would lead to his compliance with the landlord's request to move by the end of May 2012.

Pursuant to section 63 of the *Act*, the DRO may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, there was some discussion pursuant to section 63 of the *Act* to determine whether a compromise could be achieved and a resolution of this dispute could be obtained. Although the initial discussions seemed promising and both parties expressed conditional willingness to consider ending this tenancy by May 31, 2012, the tenant suddenly became very irate when the subject of the unpaid rent was introduced. At this stage, the tenant's previously co-operative demeanour changed rapidly and he became so angry that he began uttering profanities. In disconnecting from the teleconference hearing shortly thereafter, the tenant advised that no one would make him leave the rental unit and that he intended to stay in the rental unit. I continued the hearing in the tenant's absence, although by that time there was little additional evidence to hear.

Analysis

Based on the landlord's undisputed written evidence regarding the measures taken by the municipality to clear tenants from the unauthorized suites in the basement of this rental property and the oral testimony of the parties, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of when he said he received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days leads to the end of his tenancy on the corrected effective date of the notice. As I find that the 1 Month Notice was not deemed served until May 4, 2012, the earliest date that the landlord could obtain an end to this tenancy and an Order of Possession is the month following the deemed service of the 1 Month Notice. As such, I order that the tenancy ends by 1:00 p.m. on June 30, 2012, by which time the tenant is required to have vacated the rental unit.

Conclusion

The landlord is provided with a formal copy of an Order of Possession to take effect by 1:00 p.m. on June 30, 2012. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As I do not accept that the landlord's attempt to amend the application for dispute resolution has provided the tenant an adequate opportunity to know the case against him and respond, I dismiss the landlord's request for a monetary award for unpaid rent with 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: May 18, 2012

Residential Tenancy Branch