



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, PSF, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

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. Both parties agreed that the landlord (the tenant's mother) handed the tenant the 10 Day Notice on July 4, 2012. I am satisfied that the landlord served the 10 Day Notice in accordance with the *Act*.

During the hearing, the parties agreed that the landlord has not issued the tenant a 1 Month Notice. Therefore, the tenant withdrew her application to cancel the 1 Month Notice. That application is withdrawn. At the hearing, the landlord made an oral request for an Order of Possession if the tenant's application to cancel the 10 Day Notice were dismissed.

Preliminary Issue - Service of Tenant's Application

The tenant testified that she placed a copy of her dispute resolution hearing package in the mail slot on the landlord's door on August 5, 2012. The landlord denied having received a copy of the tenant's dispute resolution hearing package and even disputed her daughter's claim that she had a mail slot in her door. The landlord testified that she only learned of this hearing when she called the Residential Tenancy Branch (RTB) to obtain information about a review hearing of her original application for a monetary

award for unpaid rent, an end to this tenancy and an Order of Possession on the basis of the 10 Day Notice (RTB File # 792366).

Issues(s) to be Decided

Has the tenant served her application for dispute resolution to the landlord in accordance with the *Act*? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant testified that this periodic tenancy commenced on May 1, 2012. The landlord testified that it began on June 1, 2012. Although neither party submitted a copy of the Residential Tenancy Agreement (the Agreement) for the tenant's application, a copy of this Agreement was in the landlord's earlier application referred to by both parties during this hearing. The Agreement signed by both parties on May 31, 2012, confirms the landlord's claim that the tenancy commenced on June 1, 2012. Monthly rent is set at \$500.00, payable in advance on the first of each month. Although the Agreement required the payment of a security deposit of \$250.00, the Agreement did not require the tenant to pay this deposit until June 30, 2012.

Conflicting evidence was provided with respect to whether the security deposit was actually paid by the tenant. In the early stages of this hearing, the tenant testified that she did not pay the security deposit. Later in the hearing, she modified this testimony when she confirmed the terms of an August 13, 2012 mutual agreement to end this tenancy that she signed. This mutual agreement, the only written evidence supplied by either party for this hearing, noted that the tenant had received a return of her \$250.00 damage deposit in cash.

The landlord also gave conflicting testimony with respect to the security deposit. Early in the hearing, she testified that the tenant had not paid her security deposit for this tenancy. Later in the hearing, the landlord said that she had cashed a \$250.00 cheque from the Ministry of Social Development (the Ministry) directed to her as the tenant's landlord on July 17, 2012. She said that this payment was for the tenant's unpaid security deposit and not for the \$250.00 in outstanding rent for July 2012. The landlord's witness gave undisputed sworn testimony that a \$240.00 cash payment was returned to the tenant on August 13, 2012. The witness said that this payment was for the return of the tenant's security deposit.

The parties agreed that the 10 Day Notice identified \$250.00 in unpaid rent. The landlord's 10 Day Notice required the tenant to end this tenancy by July 16, 2012.

Analysis

The tenant testified that she did not apply for dispute resolution within 5 days of receiving the landlord's 10 Day Notice. In fact, she did not apply for dispute resolution to seek a cancellation of the landlord's 10 Day Notice until July 31, 2012, 27 days after receiving that Notice. The tenant also testified that no payment of the \$250.00 in rent identified as owing in the 10 Day Notice was provided to the landlord until a cheque was issued by the Ministry on July 13., 2012. Although the tenant testified that the \$250.00 cheque cashed by the landlord on July 17, 2012 was for her unpaid rent, the landlord testified that she obtained it for the unpaid security deposit, a deposit returned to the tenant on August 13, 2012. Based on the evidence before me and in accordance with section 46(5) of the *Act*, the tenant's failure to either pay her rent in full or apply for dispute resolution within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 16, 2012. By way of the mutual agreement entered into between the landlord and the tenant submitted as written evidence, the tenancy continued until August 15, 2012. However, the tenant remains in the rental unit despite her signed agreement to end her tenancy and vacate the rental unit by August 15, 2012.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The tenant has not served the landlord in a manner required by section 89(1) of the *Act*. As I am not satisfied that the landlord was properly served with the tenant's application for dispute resolution, I dismiss her application for a monetary award with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. As there is undisputed evidence that the tenant was beyond the time frame for seeking a cancellation of the 10 Day Notice when she applied for dispute resolution to cancel the 10 Day Notice, I dismiss her application to cancel the 10 Day Notice without leave to reapply.

Section 55(1) of the Act reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application for dispute resolution to cancel the landlord's 10 Day Notice, I grant the landlord a two-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The tenant's application to cancel the 1 Month Notice is withdrawn. I dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. I dismiss the tenant's application for a monetary award with leave to reapply.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the 10 Day Notice were dismissed. As the tenant's application to cancel the 10 Day Notice is dismissed, I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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 *Residential Tenancy Act*.

Dated: August 29, 2012
