



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Main Rooms
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MT, CNC, MNDC, OLC

Introduction

This Hearing was scheduled to hear the Tenant's application for more time to file his application to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy for Cause; for compensation for damage or loss under the Act, regulation or tenancy agreement; and an Order that the Landlord comply with the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

The Landlord acknowledged that he was served with the Notice of Hearing package on May 2, 2014. The Tenant did not provide any documentary evidence to the Residential Tenancy Branch or to the Landlord.

The Landlord provided evidence, which the Tenant acknowledged receiving, and which included a copy of the One Month Notice to End Tenancy for Cause (the "Notice") which the Tenant seeks to cancel.

Preliminary Matters

Tenant's application for an extension of time:

The Tenant has applied for an extension of time to file his application to cancel the Notice.

The Landlord's evidence is that he served the Tenant with the Notice on March 31, 2014, by placing it under the Tenant's door at the rental unit. The Tenant testified that he did not see the Notice until April 16, 2014, when he returned from visiting his father.

I find that the Tenant received the Notice on April 16, 2014. Section 47(4) of the Act provides that a tenant may dispute a notice to end tenancy for cause within 10 days

after the date the tenant receives the notice. Therefore, in this case the Tenant had until April 26, 2014, to file his application to cancel the Notice. The Tenant filed his Application for Dispute Resolution on May 2, 2014.

I asked the Tenant why he waited until May 2, 2014, to file his Application. He stated that he didn't see it until April 16, 2014, and then he had to find out the name, address and phone number of the Landlord before he could complete his Application for Dispute Resolution. When I mentioned that the Landlord's name, address and phone number were on the Notice, the Tenant stated that he didn't keep a copy of the Notice. The Tenant acknowledged that he knew it was an "eviction" notice.

Section 66(1) of the Act provides that the director may extend a time limit established by the Act only in exceptional circumstances. Residential Tenancy Policy Guideline 36 provides that the word "exceptional" implies that the reason for failing to do something at a required time is very strong and compelling. The party must also provide persuasive evidence to support the truthfulness of what is said. An example of what could be considered "exceptional" circumstances is that the party was in the hospital at all material times. Persuasive evidence would be a letter, on hospital letterhead, stating the dates that the party was hospitalized and indicating that the party's condition prevented them for contact an agent to file an Application on their behalf.

In this case, I find that the Tenant did not provide any exceptional circumstances for filing late and therefore I dismiss his application for an extension of time and his application to cancel the Notice will not be heard.

The Landlord's agent requested an Order of Possession.

Section 55(1) of the Act states:

Order of possession for the landlord

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.

Section 53 of the Act provides that an incorrect end-of-tenancy date on a notice to end tenancy is automatically corrected to the earliest date that complies with the Act. I find that the effective date of the end of the tenancy was May 31, 2014. However, the

Landlord asked that the Order of Possession be effective June 30, 2014. Therefore, further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., June 30, 2014.**

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order in compensation for damage or loss under the Act, regulation or tenancy agreement?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant applies for compensation in the amount of \$900.00 and for an Order that the Landlord comply with the Act, regulation or tenancy agreement.

The Tenant did not provide any documentary evidence in support of his Application. In the "Details of Dispute" box on his Application for Dispute Resolution, the Tenant writes:

"We had a hand shake that if my room is tidy I will then get a fridge. I had to go take care of my dad for 3 weeks. So I slipped a letter under door telling him I can't clean it right away. He then claims he slipped a letter under my door knowing it wasn't tidy."

During the Hearing, the Tenant testified that he did not have a working fridge and that he asked the Landlord on several occasions for a working fridge. The Tenant stated that he lost groceries because his fridge was not working. The Tenant testified that he did not advise the Landlord in writing that his fridge did not work.

Analysis

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Details of Dispute section of the Application gives the following instructions:

In two or three sentences, describe the issue. Include any dates times, people or other information that says who, what, where and when the issue arose or the event occurred. When the dispute includes a request for a Monetary Order, include a detailed calculation. Attach a separate sheet if necessary. Any additional sheets must be signed.

I dismiss the Tenant's claim for compensation for the following reasons:

- In this case, I find that the Tenant provided insufficient details on his Application for Dispute Resolution with respect to why he was seeking compensation. An applicant must provide sufficient details on an application in order that the respondent can understand what he is seeking and have the opportunity to provide rebuttal evidence prior to the Hearing.
- I find that the Tenant did not satisfy any of the elements in the test outlined above.

With respect to the Tenant's request for an Order that the Landlord comply with the Act, regulation or tenancy agreement, I dismiss this portion of his application. The Tenant did not provided insufficient details on his Application for Dispute Resolution with respect to whether he wished the Landlord to comply with the Act or the regulation or the tenancy agreement, or what section of the Act, regulation or tenancy he sought compliance with. An applicant must provide sufficient details on an application in order that the respondent can understand what he is seeking and have the opportunity to provide rebuttal evidence prior to the Hearing. In any event, the tenancy is ending and therefore the Tenant's application for an Order that the Landlord comply with the Act, regulation or tenancy agreement is moot.

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., June 30, 2014**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 11, 2014

Residential Tenancy Branch

