Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for an order of possession for cause pursuant to section 55;

The tenant did not attend this hearing, although I waited until 0946 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent attended the hearing.

The landlord asked that in the event I issue an order of possession that it be effective as of 31 October 2015.

Preliminary Issue – Service of Dispute Resolution Package

This application was filed 6 August 2015.

The landlord testified that the he served the tenant with the dispute resolution package on 3 September 2015 by registered mail. The landlord provided me with a Canada Post customer receipt. The landlord testified that the mailing was returned unclaimed.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

> Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the tenant was deemed served with the dispute resolution package on 8 September 2015, the fifth day after its mailing.

Section 59 of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within three days of making it, or within a different period specified by the director. However, the Act does not specify any particular consequences or penalty for failing to serve such documents within the prescribed time limit.

The landlord explained that the dispute resolution package was sent late as he was out of the country. The landlord testified that he served the documents as soon as he returned.

Although the late service does not automatically mean that a hearing will not proceed, there may be some circumstances where administrative fairness requires that a respondent be granted more time to prepare for a hearing. In this case, the tenant was deemed served with the dispute resolution package on 8 September 2015. This would have allowed the tenant five weeks' notice of this application. I find that this amount of notice is sufficient and does not unduly prejudice the tenant. As such, the hearing proceeded.

Preliminary Issue – Landlord former RTB Arbitrator

At the outset the landlord disclosed that he is a former arbitrator of the Residential Tenancy Branch. The landlord was engaged on a contract basis. The landlord stated that he last worked in this capacity over ten years ago. I have no knowledge of the landlord prior to this hearing. On this basis, I find that there is no reasonable apprehension of bias and I could continue to hear the landlord's application.

Preliminary Issue – Amendment Refused

Since filing his application, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord asked to amend his application to include this notice. The landlord did not submit an amended application.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

I find that the amendment would unduly prejudice the tenant as the landlord did not submit an amended application. On this basis, the amendment is refused.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 March 2012. The parties entered into a written tenancy agreement dated 27 February 2012. Current monthly rent is $1,012.05 and is due on the first. The landlord continues to hold the tenant's security deposit in the amount of $487.50, which was collected at the beginning of the tenancy.

On 8 June 2015, the municipal fire department conducted a hoarding inspection. That inspection noted excessive combustible materials. The tenant was ordered to reduce the level of combustible materials. A reinspection occurred on 21 July 2015. The fire prevention officer found that the clutter had been reduced, but that more was required to be done.

I was provided with photographs of the rental unit. The photographs show excessive clutter in the rental unit.

The landlord testified that he was told that the clutter represents a risk to the tenant, the rental unit and any emergency personnel trying to gain access to the rental unit in an emergency.

On 21 July 2015 the landlord issued the 1 Month Notice to the tenant. The landlord served this notice on 22 July 2015 by posting the notice to the tenant's door. The landlord also attempted to serve the notice personally, but when the tenant saw the landlord she retreated to the rental unit. The 1 Month Notice set out an effective date of 31 August 2015. The 1 Month Notice set out that it was given as:

- the tenant or person permitted on the property by the tenant has:
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

- put the landlord's property at significant risk; or
- tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Analysis

Subject to the presumption in subsection 47(5) of the Act, in an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Subparagraph 47(1)(d)(iii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has put the landlord's property at significant risk. The landlord has set out in his 1 Month Notice, among other reasons, that the tenant or person permitted on the residential property by the tenant has put the landlord's property at significant risk.

Pursuant to subsection 47(4) a tenant must dispute a notice given pursuant to section 47 within ten days from its receipt. In accordance with subsection 47(5), where a tenant fails to apply for dispute resolution within the ten-day period, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenant was deemed to have received the 1 Month Notice on 25 July 2015. This means that the tenant had until 4 August 2015 to apply to this Branch to cancel the 1 Month Notice. The tenant did not file any such application.

The landlord has provided arguable evidence to show that the tenant or person permitted on the residential property by the tenant has put the landlord's property at significant risk. I am bound by the conclusive presumption set out in subsection 47(5) of the Act. As such, the tenant is presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice, 31 August 2015. As this date has now passed and on the basis of the landlord's request, the landlord is entitled to an order of possession dated 31 October 2015.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $50.00 filing fee paid for this application.

Conclusion

The landlord is provided with a monetary order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession effective 31 October 2015. 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 subsection 9.1(1) of the Act.

Dated: October 16, 2015

Residential Tenancy Branch