Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF; MT, CNC

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

This hearing dealt with the tenant AR's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenants did not attend this hearing, although I waited until 0953 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord TG (the landlord) provided evidence on behalf of the landlords.

Preliminary Issue – Service of Landlords' Documents

Service of the dispute resolution package in an application such as the landlords' must be carried out in accordance with subsection 89(1) of the Act:

> An application for dispute resolution … when required to be given to one party by another, must be given in one of the following ways:
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> (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;…

The landlord testified that she served the landlords' dispute resolution package by Xpresspost on 10 September 2015. The landlords provided me with the Canada Post receipts that indicated the same. With the landlord's consent, I requested the tracking information from the Canada Post website. The tracking information did not include confirmation from a named person.

"Registered mail" is defined in section 1 of the Act:

> "registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available;

As the landlords' method of service did not include confirmation to delivery to a named person, it is not "registered mail" within the meaning of the Act. I informed the landlords of this at the hearing.

The landlord testified that she personally delivered a copy of her amended application to the tenant AR on 23 October 2015. On the basis of this evidence, I find that the tenant AR was duly served with the landlords' amended dispute resolution package on 23 October 2015 pursuant to paragraph 89(1)(a) of the Act. As the tenant MR was not served with the landlords' dispute resolution package (amended or otherwise), the landlords' application against the tenant MR is dismissed with leave to reapply.

The landlords provided me with Canada Post tracking information for service of their evidence package. The package was sent by registered mail on 20 October 2015. On the basis of this evidence, I find that the tenant AR was served with the landlords' evidence on 25 October 2015, the fifth day after its mailing in accordance with sections 88 and 90 of the Act.

Preliminary Issue – Landlords' Request to Amend 1 Month Notice

The 1 Month Notice is dated 30 August 2015. The landlord testified that this was an error and that the 1 Month Notice was prepared and served in person on 30 July 2015. The tenant AR's application sets out that she received the 1 Month Notice on 7 August

2015. The landlord asked that I amend the 1 Month Notice from "30 August 2015" to "30 July 2015".

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlords made a mistake in filling out the form. The form was clearly received by the tenant AR at some time on or before 7 August 2015. As such, it is obvious that the date "30 August 2015" is an error. On this basis, I am exercising my discretion to amend the 1 Month Notice to "30 July 2015" the date on which the landlord testified it was actually issued.

Issue(s) to be Decided

Is the tenant AR entitled to more time to make her application? Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant AR's claim and the landlords' cross claim and my findings around each are set out below.

This tenancy began 1 June 2015. The parties entered into a written tenancy agreement dated 8 June 2015. Monthly rent of $1,100.00 is due on the first. The landlords continue to hold the tenant's security deposit in the amount of $550.00, which was collected at the beginning of the tenancy.

The landlord testified that on 30 July 2015 the landlords issued the 1 Month Notice to the tenants. The landlord testified that the 1 Month Notice was served personally to the tenant AR. 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 significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant AR applied to cancel the 1 Month Notice on 9 September 2015. The landlord did not consent to the tenant AR's application for more time to file her application.

The landlord testified that she has been called at all hours by neighbours of the rental unit with complaints about the tenant's conduct. The landlord testified that neighbours report loud fighting, death threats, parties and police attendance at the rental unit. The landlord testified that as a result of these reports she has had to attend at the rental unit at times ranging between 0900 and 0200 to try to solve the problem. The landlord testified that she believes that this amounts to a significant inference or unreasonable disturbance of the landlords.

The landlord testified that the tenant's rent is paid in part by the Province of British Columbia. The landlord testified that the tenant's portion of rent in the amount of $580.00 has not been paid for September, October, or November. The landlord testified that current rent arrears are $1,740.00.

Analysis

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

(1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

(2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:

   a. The extension is agreed to by the landlord;

   b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The effective date of the 1 Month Notice was 31 August 2015. The tenant applied for dispute resolution 9 September 2015. The tenant failed to appear to advance submissions in support of her application for more time to file. Further, in accordance with subsection 66(3), I have no discretion to extend the time limit in these circumstances. Accordingly, the tenant's application for an extension of time is dismissed without leave to reapply.

As the tenant's request for an extension of time is dismissed, the conclusive presumption contained in subsection 47(5) is applicable. Pursuant to subsection 47(5) of the Act, a tenant is conclusively presumed to have accepted a tenancy ends where the tenant does not apply for dispute resolution within ten days of receiving the notice:

> If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
>
> (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
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> (b) must vacate the rental unit by that date.

As the tenancy ended 31 August 2015 and the tenant has not vacated the rental unit, the landlords are entitled to an order of possession effective two days from service on the tenant.

The landlord provided sworn and uncontested testimony that the tenant has arrears totaling $1,740.00. Pursuant to section 57 of the Act, a landlord may make a claim for compensation from an overholding tenant.

There is no evidence before me that indicates that the tenant was entitled to any reductions for her use and occupancy of the rental unit for the months of September, October and November. Accordingly, the landlords were entitled to compensation for the tenant's use and occupancy. As the tenant has failed to meet her obligation under the Act, I find that the landlords have proven their monetary entitlement to $1,740.00, the amount of the arrears.

As the landlords were successful in this application, I find that the landlords are entitled to recover the $50.00 filing fee paid for this application.

The landlord testified that the landlords continued to hold the tenant's $550.00 security deposit, plus interest, collected at the beginning of the tenancy. Over that period, no interest is payable. Although the landlords' application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlords to retain the security deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlords' favour in the amount of $1,240.00 under the following terms:

Item	Amount
Unpaid September Rent	$580.00
Unpaid October Rent	580.00
Unpaid November Rent	580.00
Offset Security Deposit Amount	-550.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$1,240.00**

The landlords are provided with this 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. 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: November 12, 2015

Residential Tenancy Branch