



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Qualicum-Parksville Kiwanis Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the female tenant and two agents for the landlord.

The tenant testified that she submitted additional evidence to the landlord and the Residential Tenancy Branch by regular mail on December 4, 2015. The landlord confirmed that they have not received this additional evidence. I have also confirmed that this evidence was not received by the Residential Tenancy Branch.

In describing this evidence the tenant submits that part of the evidence is a letter from the Office of the Privacy Commissioner of Canada in regard to a complaint she has lodged with that office regarding some of the landlord's evidence.

The tenant submits that this letter states that I cannot consider a letter submitted as evidence from the landlord because the Commissioner is investigating whether it was obtained by a breach of privacy.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

As the tenant has not submitted her additional evidence in accordance with Rule of Procedure 3.1 I will not consider it, with the exception of the letter from the Office of the Privacy Commissioner of Canada. I ordered the tenant to submit this letter by fax no later than the end of business December 15, 2015. I provided the tenant with the Residential Tenancy Branch fax number during the hearing.

In response to my order above the tenant submitted a letter from the Office of the Information and Privacy Commissioner for British Columbia. As such, it appears the

tenant lodged her complaint with the Privacy Commissioner for British Columbia and not with the Privacy Commissioner of Canada as she stated in the hearing.

This letter dated December 4, 2015 confirms the Commissioner's Office will be investigating a privacy breach involving "a financial record, information and transaction reports relating to your personal Unlimited Chequing Account ending in 8291." [reproduced as written]

The letter goes on to say: "Also while we will be undertaking an investigation into circumstances and extent of the this breach please be advised that any and/or all information has been disclosed in and/or is connected to the incident can and/or will not be able to be admissible and/or used against or associated in connection to you until the investigation is concluded and findings are presented." [reproduced as written]

This letter does not provide any indication of the authority the Commissioner's office relies upon to restrict the use of evidence submitted to this hearing. Section 75 of the *Residential Tenancy Act (Act)* states: "the director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary and appropriate, and relevant to the dispute resolution proceeding.

Based on the above, I find the tenant has provided no legal authority to prevent my consideration of the letter dated November 4, 2015 from the tenant's bank to the landlord. As such, I find, pursuant to Section 75 of the *Act*, I have authority to consider the submission of all of the landlord's evidence.

Despite this finding, I note that in reaching the following decision, I have not considered the letter dated November 4, 2015 from the tenant's bank to the landlord.

During the hearing the landlord requested an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to more time to submit their Application for Dispute Resolution to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 66 of the *Act*.

Should the tenants be unsuccessful in seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on April 28, 2015 for a month to month tenancy beginning on May 1, 2015 for a monthly rent of \$590.00 due on the 1st of each month with a security deposit of \$295.00 paid.

Both parties submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on October 7, 2015 with an effective vacancy date of October 17, 2015 because of \$590.00 in unpaid rent that was due on October 1, 2015.

The landlord testified that he served the tenants personally with the Notice on October 7, 2015. The tenant confirmed that she received the Notice on the evening of October 7, 2015. I note that the tenant had stated on her Application for Dispute Resolution that she received the Notice on October 12, 2015.

The tenant explained that when she received it she was trying to find out what had gone wrong with the payment that was to be automatically transferred from her account to the landlord's account. She later wanted to submit her Application for Dispute Resolution to dispute the Notice but due to the statutory holiday on October 12, 2015 the office was closed.

The tenant submits that she could not get to the office to submit her Application on October 13, 2015 because she did not have access to a vehicle until October 14, 2015.

The landlord submits the tenant has not paid any rent for the months of October, November, or December 2015. In support of their position regarding October rent the landlord has submitted a copy of a document dated October 5, 2015 entitled "Personally Approved Payments Service – Returned Items Report" from their own financial institution.

This document states that for the payment scheduled to be made on October 1, 2015 in the amount of \$590.00 the funds did not clear.

The tenant has provided a printout showing her personal bank account activity. This statement shows that a payment was made to the landlord on October 1, 2015 in the amount of \$590.00.

Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

Based on the testimony of both parties I find the tenants received the 10 Day Notice to End Tenancy for Unpaid Rent on October 7, 2015. The Notice stipulated that the tenants would have 5 days to submit an Application for Dispute Resolution if they wished to dispute the Notice.

While the 5 day deadline to submit an Application to dispute the notice would have fallen on October 12, 2015, I accept that this was a statutory holiday and the Residential Tenancy Branch and Service BC offices were closed on that date.

As such, I find the tenants were entitled to submit their Application on the next business day which was October 13, 2015. Despite the tenant's claim that she could not access a vehicle to attend to submit her Application she has provided no explanation as to why she or the other tenant could not get to the office by any other means until October 14, 2015, including any reasons why they could not have applied on October 8th or 9th, prior to the long weekend.

As a result, I find the tenant has failed to establish exceptional circumstances prevented the tenants from filing their Application for Dispute Resolution until the day after the required deadline. Therefore, I find the tenants are not entitled to more time to submit their Application seeking to cancel the Notice.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

To establish whether or not rent was owed to the landlord on the day that they issued the 10 Day Notice, I find that it is not sufficient to provide evidence that monies may have been withdrawn from the tenant's account but rather the tenant must provide evidence to establish that the landlord received the payment.

While the tenant has submitted her printout showing that the rent was withdrawn from her account on October 1, 2015 I note the landlord's third party report shows that the money was never deposited to the landlord's account.

As such, I find the tenant has failed to provide any evidence that would contradict the landlord's third party report confirming that the landlord did not receive any payment of rent on or since October 1, 2015.

As a result, I find that rent was owed to the landlord and it remained unpaid as of October 7, 2015. Therefore, I find the landlord was justified, under the *Act*, in issuing the 10 Day Notice to End Tenancy for Unpaid Rent.

As I have found the tenants are not entitled to additional time to submit their Application for Dispute Resolution seeking to cancel the 10 Day Notice, I find, that they did not submit their Application for Dispute Resolution with the required 5 days after receipt of the Notice.

As such and pursuant to Section 46(5) I find the tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

As a result, I dismiss the tenants' Application for Dispute Resolution in its entirety.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld and the landlord request one an order of possession must be granted to the landlord.

Conclusion

Based on the above and pursuant to Section 55(1) I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: December 16, 2015

Residential Tenancy Branch

