



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MT, CNC, MNDC, O

For the landlord – OPC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant seeks more time to file his application to cancel the One Month Notice to End Tenancy; for an Order to cancel the One Month Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and other issues. The landlord seeks an Order of Possession for Cause and to recover the filing fee from the tenant for the cost of this application.

The matter was set for a hearing at 09.00 a.m. on this date to hear both parties' applications. The hearing went ahead as scheduled the tenant dialed into the conference call and was ready to proceed. The telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the landlord called into the hearing during this time. Based on this I find that the landlord has failed to present the merits of his application and the landlord's application is dismissed without leave to reapply.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on October 02, 2015. Canada Post tracking numbers were provided by the tenant's Advocate in evidence.

The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

I have determined that the portion of the tenant's application dealing with any claim other than the request seeking more time to cancel a Notice to End Tenancy and the cancellation of the One Month Notice to End Tenancy for cause is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules of Procedure, I have severed the tenant's application and dismissed that portion of the tenant's application for a Monetary Order **with leave to reapply**.

Issue(s) to be Decided

Has the tenant filed his application late and if so is more time allowed under s. 66 (1) of the *Act*?

Is the tenant entitled to an Order to cancel the One Month Notice?

Background and Evidence

The tenant testified that this month to month tenancy started on June 15, 2013. Rent for this unit is \$750.00 per month due on the 1st of each month.

The tenant testified that he received a typed notice to end his tenancy in 30 days. The tenant has difficulties reading documents and with has difficulty hearing. The tenant took this letter to a Seniors Services Centre and was advised it was not a legal notice. This notice letter is dated August 31, 2015 and was posted to the tenant's door on that

date. An advocate then contacted and advised the landlord that this was not a valid notice. The landlord then served the tenant with a legal Notice on his door on September 21, 2015. The tenant was referred to the Advocate attending the hearing today and an application to cancel the Notice was filed on September 28, 2015 and served upon the landlord.

The tenant has provided a copy of the One Month Notice in documentary evidence and testified that he disputes the reason given on the Notice. The tenant testified that he has not significantly interfered with or disturbed other occupants or the landlord. The tenant testified that he is the one being harassed by his neighbours and a man living with the landlord. The man living with the landlord walks by the tenant's window and pounds on it day and night. He also stands on some wheels stored under the window and has blown his nose on the tenant's window and repeated this action on the window of the tenant's van.

The tenant testified that this person has kicked his van and on one occasion has driven in to the tenant's van causing so much damage to the fender and bumper that ICBC wrote off the tenant's van. The tenant purchased a new vehicle and this man has caused some damage to that. The tenant called the police concerning these incidents. This man has continued to abuse the tenant. The tenant testified that he is 83 years old and this man is half his age.

The tenant testified that another tenant living beside the tenant threatened to cut the tenant's throat and the tenant later saw this neighbour standing in his window holding a machete. The police were called by the tenant and they spoke to this neighbour but were told it was just a joke so no action was taken. The landlord has done nothing about this harassment or abuse and just wants the tenant out of his unit.

The tenant's Advocate stated that they have not received a CD in evidence from the landlord.

The tenant seeks to have the Notice cancelled and wants the tenancy to continue as it is hard to find other accommodation in the area.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord does not provide sufficient evidence to satisfy the burden of proof or to dispute the tenant's claims then I have insufficient evidence to support the reason given on the Notice.

I will first address the issue of when the Notice was served and if the tenant filed his application within the 10 allowable days. The landlord's first notice was not a valid notice but rather a typed letter. The date on that letter was August 31, 2015 and the proof of service document provided by the landlord shows that a 'notice' was posted to the tenant's door on this date. However, as this was not a valid notice to end the tenancy, the landlord then served the tenant with a legal One Month Notice to End Tenancy for Cause dated September 01, 2015. The landlord has not provided any further documentation showing when or how that Notice was served upon the tenant. The tenant testified that it was on his door on September 21, 2015. In the absence of any further documentary evidence from the landlord showing when and how this Notice was served upon the tenant then I accept the tenant's testimony that he received it on his door on September 21, 2015 and therefore I find the tenant did file his application within the allowable time frame.

The tenant provided sworn testimony concerning events that have occurred at this rental property. The landlord has not appeared to dispute the tenant's version of events. Consequently, I find that the landlord did not attend the hearing to provide testimony concerning the reason given to end the tenancy. I find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy, as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, September 01, 2015 is cancelled and the tenancy will continue.

The tenant is at liberty to file a new application for money owed or compensation for damage or loss.

The landlord's application is dismissed without leave to reapply.

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 02, 2015

Residential Tenancy Branch

