



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, OLC, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1135 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. 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.

Preliminary Issue – Tenant's Failure to Appear

In this application, the tenant has the onus of proving on balance of probabilities his entitlement to the following remedies:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and

- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the following portions of the tenant's claim dismissed without leave to reapply:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Preliminary Issue – Landlord's Late Evidence

The landlord testified that he served his evidence by posting it to the tenant's door on or about 9 November 2015. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to sections 88 and 90 of the Act on 12 November 2015, the third day after its posting.

Rule 3.15 sets out that an applicant must receive evidence from the respondent not less than seven days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence in reply to the tenant's application was 10 November 2015.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets

out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the documents consist of written statements and a receipt. The receipt was intended to respond to the tenant's monetary claim. As the tenant's monetary claim has been dismissed, the receipt is no longer relevant and can be excluded. The written statements are included as they do not provide any information other than that which could have been testified to at the hearing. On this basis, the tenant is not unduly prejudiced by the admission of the written statements. The statements are included.

Preliminary Issue – Evidence After The Hearing

The copy of the 1 Month Notice provided by the tenant do not include the second page. The landlord testified that he served both pages of the notice to the tenant.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. As the tenant has a complete copy of the 1 Month Notice, there is no undue prejudice to the tenant by my acceptance of this notice after the hearing.

I ordered the landlord to provide a complete copy of the 1 Month Notice by the end of the day. The landlord provided a complete copy.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

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 15 September 2014. Monthly rent of \$1,050.00 is due on the first.

On 26 September 2015, the landlord served the 1 Month Notice and 10 Day Notice by posting these notices to the tenant's door.

The 10 Day Notice was dated 26 September 2015 and set out an effective date of 6 October 2015. The 10 Day Notice set out that it was given as the tenant had failed to pay \$1,050.00 of rent that was due 1 September 2015. The landlord testified that the tenant paid the outstanding rent on 26 September 2015.

The 1 Month Notice was dated 26 September 2015 and set out an effective date of 31 October 2015. The 1 Month Notice set out that it was given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- 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 assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the rental unit consists of an upper floor rental unit and a lower floor rental unit. The landlord testified that prior to 15 September 2014 the tenant's friend QG occupied the lower floor rental unit. The landlord testified that QG recommended the tenant to the landlord. The landlord testified that the tenant would harass QG. The landlord testified that the tenant climbed onto the roof of the residential property and poured water down the chimney. The landlord testified that QG left the rental unit as a result of an altercation with the tenant requiring police intervention.

The landlord testified that the tenant would call him at all hours including as late as 0100. The landlord testified that he believed the tenant to be intoxicated at these times. The landlord testified that he experienced approximately 12 inappropriate calls by the tenant. The landlord testified to the tenant's unpredictable and threatening behaviour. The landlord testified that, while the tenant did not directly threaten the landlord, the tenant would throw things around and break them as well as scream.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. Pursuant to paragraph 46(5)(a) of the Act, if the tenant pays the overdue rent within five days after receiving a 10 Day Notice, that notice is of no effect.

The evidence indicates that the 10 Day Notice was served 26 September 2015. The evidence also indicates that the tenant paid his rent, in full, on 26 September 2015. As the tenant paid his rent within five days of receiving the 10 Day Notice, the 10 Day Notice is of no effect. As the 10 Day Notice is not valid, the landlord is not entitled to an order of possession. The landlord's application for an order of possession on the basis of the 10 Day Notice is dismissed without leave to reapply.

In an application to cancel 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. This particular 1 Month Notice was given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- 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 assigned or sublet the rental unit/site without landlord's written consent.

Subparagraph 47(1)(d)(i) 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 significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord has provided sworn and uncontested testimony that the tenant's conduct was so severe that it caused another occupant to vacate the residential property. The landlord provided testimony that the disturbances by the tenant included screaming, breaking objects, and climbing on to the chimney to pour water into the residential property. I find that this conduct constitutes a significant inference or unreasonable disturbance of both the other prior occupant and the landlord. On this basis the 1 Month Notice is valid. As this reason is sufficient to substantiate the 1 Month Notice, I need not consider the remaining reasons set out in the notice.

The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply. The landlord is entitled to an order of possession effective two days from service on the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice is granted.

The following aspects of the tenant's claim are dismissed without leave to reapply:

- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

At the hearing, the landlord requested an order of possession if the tenant's application for cancellation of the 1 Month Notice was dismissed.

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant(s). 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: December 09, 2015

Residential Tenancy Branch

