Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

I note that at the end of the 20 minute hearing, I had to mute the tenant's telephone line as she was screaming into the telephone receiver. After muting her, I explained to the parties that I would mail my decision to the addresses on the tenant's application for dispute resolution and ended the hearing at that point.

Issue to be Decided

Should the tenant be granted more time to file her application for dispute resolution? Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2013 and that the rental unit is a subsidized housing unit. At the times relevant to the matters at issue, the tenant's portion of her rent was $546.00 per month, payable in advance on the first day of each month. The parties agreed that the tenant's rent had been paid by a ministry in the government (the "Ministry") as part of her disability payments.

The parties agreed that the Ministry did not make payments in October and November. The landlord provided evidence that he served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") on November 18, 2015 by posting it to the door of the rental unit. The tenant testified that she discovered the Notice outside her door on November 20, 2015.

The tenant claimed that upon receiving the Notice, she immediately attended at the Ministry office and was assured by the staff that they would take care of paying the

arrears. The tenant testified that she did not file for dispute resolution to dispute the Notice because she believed that the Ministry had paid the arrears. She testified that on or about December 1, she received a notice from the landlord advising that they wished to conduct a move out condition inspection report and it was at this time that she realized that her tenancy was still in jeopardy. She testified that she again went to the Ministry office and was told that on November 26, they telephoned the landlord SP and he told them that she was not a resident of the building because she had been evicted and that she was of "no fixed address." The Ministry advised the tenant at that time that they had offered to pay her rent, but the landlord had refused. The tenant applied to dispute the Notice on December 2, 2015.

The tenant testified that she attempted to obtain her records from the Ministry on several occasions, but was told that they could not be released to her because of privacy concerns. She testified that the day before the hearing, she filed a request that the Residential Tenancy Branch be permitted to telephone the Ministry to obtain information about her case file and requested an adjournment to allow time for the Branch to contact the Ministry. I denied the request for the reasons which are outlined in the Analysis section below.

The landlord denied that he had received any communication from the Ministry. He testified that he did not refuse to receive rent and specifically denied that he received a telephone call on November 26, testifying that on that date he was in Mexico getting married.

Analysis

The tenant requested an adjournment to allow time for the release of her records from the Ministry. Section 7.9 of the Residential Tenancy Rules of Procedure outlines the factors which I must consider when determining whether to grant an adjournment. Those factors are as follows:

> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
>
> - the oral or written submissions of the parties;
> - the likelihood of the adjournment resulting in a resolution;
> - the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> - whether the adjournment is required to provide a fair opportunity for a party to be heard; and

- the possible prejudice to each party

I determined that it was not appropriate to grant the adjournment, which was opposed by the landlord. The Residential Tenancy Branch does not contact parties or third parties in order to obtain evidence as this is not an investigative body. It is the responsibility of the parties to provide the information necessary and therefore granting an adjournment to allow the Branch to contact the Ministry would not result in a resolution as the Branch does not perform this role. The tenant filed to dispute the Notice on December 2, 2015 and had a full 8 weeks in which to determine how to compel the Ministry to release records, but for some reason chose not to act until immediately before the hearing. I found that the tenant's neglect in finding a means to put the evidence before this tribunal led to the need to ask for an adjournment. I found that the tenant had ample opportunity to be heard and I found that as the adjournment was unnecessary because the Branch does not contact third parties on behalf of litigants, the prejudice to the tenant in denying the adjournment was minimal as compared to the prejudice to the landlord in delaying this process as the landlord has already gone without rent for 4 months as of the date of this hearing.

The tenant requested an extension of time in which to file her application for dispute resolution. I determined that because the tenant believed she had arranged with the Ministry to pay her rent and was unaware that they had failed to do so, the circumstances were indeed exceptional and I grant her an extension of time beyond the 5 days usually permitted after having received a Notice.

When a landlord alleges that rent has not been paid, the burden lies with the tenant to prove that rent has been paid as it is not possible for the landlord to prove that an event did not occur. The tenant acknowledged that rent has not been paid and has failed to provide evidence to corroborate her claim that the landlord refused payment. I accept the direct evidence of the landlord SP who advised that he did not receive a telephone call from the Ministry over the hearsay evidence of the tenant who claimed that a Ministry staff member told her that a conversation had taken place with SP.

I find that the landlord has grounds to end the tenancy and for that reason, I dismiss the tenant's claim. During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. At the hearing, the landlord said that he would be willing for the order of possession to be effective on February 15, 2016. I find that to be an appropriate date and so order.

Conclusion

The tenant's claim is dismissed and the landlord is granted an order of possession.

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: January 27, 2016

Residential Tenancy Branch