Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy. I note that while the tenant originally applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent on December 31, 2015 she submitted an Amendment to an Application for Dispute Resolution on January 7, 2016 seeking to cancel a 1 Month Notice to End Tenancy for Cause.

The hearing was conducted via teleconference and was attended by the tenant; her legal counsel and the landlord's agent.

At the outset of the hearing the tenant's legal counsel submitted that the tenant had also asked to recover the filing fee for the Application for Dispute Resolution. He stated that he had received documentation from the Residential Tenancy Branch accepting the Application including the filing fee.

I requested legal counsel to submit this documentation via fax after the hearing concluded, I provided the fax number during the hearing. At the time of writing this decision no documentation had been received.

However, upon further discussion it was clarified that the Application legal counsel was referring to was a cancelled Application for Dispute Resolution. He explained they had originally filed a separate Application to dispute the 1 Month Notice in which they included a request to recover the filing fee.

They later decided to amend the tenant's original Application to dispute the 10 Day Notice instead of continuing with their second Application. As such, that Application was cancelled.

As such, I find the tenant had requested recovery of the filing fee for a separate Application but never did seek to amend this Application. However, I find that is not an unreasonable amendment to make during the course of the hearing, I order the tenant's Application to be so amended.

The tenant's legal counsel submitted that he had not received any documentary evidence from the landlord. The landlord's agent testified their evidence was served to the tenant's address by registered mail on February 9, 2016.

The tenant's legal counsel pointed out that the address for service on the Application for Dispute Resolution listed his address as the service address and all evidence should have been sent to that address. The tenant also testified that she had not received the landlord's evidence.

I find the landlord failed to serve the tenant with their documentary evidence to the service address provided and as such, I have not considered any of the landlord's documentary evidence.

During the hearing the tenant's legal counsel objected to the landlord's provision of any testimony. He stated that he believed it was procedurally unfair to respond to verbal testimony when there was no opportunity for the tenant to prepare for a rebuttal.

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.

I note the landlord's agent provided verbal testimony and referred to documents submitted by the tenant's legal counsel in support of his position. As such, I find that the landlord's verbal testimony was necessary; appropriate and relevant to the dispute resolution proceeding.

Furthermore, I sought responses and rebuttal from both the tenant herself and from her legal counsel. Both provided direct and relevant responses to the veracity of the landlord's testimony. Prior to the end of the hearing both the tenant and her legal counsel submitted they were satisfied with the completeness of their submissions.

In addition, I allowed the tenant's legal counsel an opportunity to develop oral submissions during the hearing in response to learning some of the specific applicable sections of the *Act*. In fact, the tribunal paused a couple of times for several minutes each time to allow legal counsel an opportunity to read the relevant sections and form his submissions.

I allowed the tenant's legal counsel to make these submissions despite the tenant not providing any indication throughout her Application for Dispute Resolution or her evidence that they intended to bring these issues forward. However, I found these

submissions were necessary; appropriate and relevant to the dispute resolution proceeding.

In this circumstance, I also sought response and rebuttal from the landlord's agent. The landlord's agent indicated prior to the end of the hearing that he was satisfied with the completeness of his submissions.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 46, 47, and 66 of the *Act.*

Should the tenant be unsuccessful in seeking to cancel either the 10 Day Notice to End Tenancy for Unpaid Rent or the 1 Month Notice to End Tenancy for Cause 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 tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on September 25, 2008 for a month to month tenancy beginning on October 1, 2008 for a monthly rent of $650.00 due on the 1st of each month with a security deposit of $325.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on December 3, 2015 with an effective vacancy date of December 15, 2015 due to $650.00 in unpaid rent;
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on November 24, 2015 with an effective vacancy date of December 31, 2015 citing the tenant is repeatedly late paying rent; there are an unreasonable number of occupants in a rental unit; the tenant or a 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, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk; the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and the tenant has failed to comply with a material

> term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The tenant acknowledged receipt of the 10 Day Notice to End Tenancy for Unpaid Rent on December 3, 2015; that she had paid the landlord $400.00 on December 7, 2015 and she had asked the Ministry of Social Development and Social Innovation to pay the balance on her behalf.

The tenant and her legal counsel indicated they had sought documentary confirmation from the Ministry that the payment had been made but they were unable to provide any such documentation. The landlord, however, testified the Ministry had provided $250.00 on December 15, 2015.

As noted above, the tenant did not submit her Application for Dispute Resolution until December 31, 2015. I advised the parties that despite these payments the tenant was required to have either paid the rent in full or file her Application for Dispute Resolution within the 5 days allowed after she **received** the Notice.

I further advised the parties in the hearing that while Section 66 of the *Act* does allow me to consider providing the tenant an extension to submit her Application to dispute the a notice to end tenancy, Section 66(3) specifically prohibits me from granting an extension if the tenant submits her Application after the effective date of the notice.

The tenant's legal counsel submitted that by accepting the payment of rent from both the tenant and the Ministry the landlord agreed to an extension of the time limit to pay rent as is allowed under Section 66(2).

The landlord's agent testified that the landlord did not make any such agreement. Legal counsel argued that by accepting the payment the agreement was implicit.

Further legal counsel submitted that by accepting the payment of rent the landlord is estopped from enforcement of the 10 Day Notice to End Tenancy for Unpaid Rent.

In regard to the 1 Month Notice to End Tenancy for Cause legal counsel submitted both in their written submission and their testimony that:

> "On or about November 24, 2015 the Landlord purports to have slid a 1 Month Notice to End Tenancy for Cause (the "Notice") under the Tenant's door. Sliding a Notice to End Tenancy for Cause under the Tenant's door does not constitute proper service pursuant to section 88 of the Residential Tenancy Act, SBC 2002, C78. The tenant did not perceive the need to respond to the improperly served Notice." [reproduced as written]

I requested, from legal counsel, the date the tenant received the 1 Month Notice. Initially, legal counsel submitted that that date was not relevant because the landlord had not served the Notice properly.

I requested, from the tenant, the date she received the 1 Month Notice. Originally she testified that she could not remember the specific date she received it because she had not written it down in her diary.

I explained to all parties that in order to submit an Application to dispute a notice to end tenancy the tenant must do so in within a specific time frame from the date it is received. After that explanation legal counsel testified that they had no knowledge of when it was received.

The landlord testified that the building manager and the property manager served the Notice by handing it personally to the tenant on November 24, 2015.

In response, the tenant testified that the landlord did not serve it personally but rather he it was slipped under the door when she was in the shower. She states she saw it on the floor when she got out of the shower. At this time the tenant confirmed that while she could not remember the specific date she received the Notice it was before the end of November 2015.

In regard to the specific causes identified on the Notice as to why the landlord was seeking to end the tenancy the parties provided the following testimony.

The landlord stated that the tenant had been late paying rent for the months of July, August, September, and November 2015. He provided specific dates for each of those months when portions of the rent were received by the landlord.

The tenant explained that the reason this had occurred was because she had been part of a program where a third party was paying a portion of her rent directly to the landlord. She stated that she had to contact them each month and that they were always late with the payment or they would pay for a different location despite the tenant not moving during the program.

The landlord submitted verbal testimony regarding the other causes identified in the 1 Month Notice. He also referred to each of the breach letters that the tenant had submitted in her evidence.

Legal counsel submitted that the landlord had not provided any specific dates of events or incidents. He also submitted that the landlord had provided no incident reports or any complaints from any regarding any of the incidents.

The landlord did not have any witnesses attend the hearing.

Analysis

Section 88 of the *Act* states all documents that are required or permitted under the *Act* to be given to or served on a person must be given or served in one of the following ways:

> (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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
> (e) By leaving a copy at the person's residence with an adult who apparently resides with the person;
> (f) By leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
> (g) By attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
> (h) By transmitting a copy to a fax number provided as an address for service by the person to be served;
> (i) As ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
> (j) By any other means of service prescribed in the regulations.

In regard to the 1 Month Notice to End Tenancy, both parties provided different versions of how it was served to the tenant. When both parties provide divergent yet equally plausible verbal accounts of events, the party with the burden of proof must provide additional evidence to corroborate their version.

In the case before me, if it were necessary to prove a document was served pursuant to Section 88, the burden rests with the landlord. I accept the landlord did not provide any corroborating evidence; in addition the agent at the hearing was neither the person who served the Notice nor the witness to that service.

However, the tenant herself and her legal counsel both acknowledge the tenant received the Notice. Therefore, I find, pursuant to Section 71(2)(b) the 1 Month Notice to End Tenancy for Cause has been sufficiently served for the purposes of the *Act*.

From the tenant's own testimony, I accept that while she could not be specific as to what date she received the 1 Month Notice she did acknowledge receipt was prior to the end of November, 2015. As such, I find the tenant received the 1 Month Notice to End Tenancy for Cause by November 30, 2015, pursuant to Section 71(2)(b).

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- The tenant is repeatedly late paying rent;
- There are an unreasonable number of occupants in a rental unit;
- The tenant or a person permitted on the residential property by the tenant has
    i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
    ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
    iii. Put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
    i. Has caused or is likely to cause damage to the landlord's property,
    ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
    iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- The tenant
    i. Has failed to comply with a material term, and
    ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, that rent is payable under the tenancy agreement.

Section 47(4) allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. As such, I find the tenant had until December 10, 2015 to submit an Application for Dispute Resolution seeking to cancel the 1 Month Notice. The tenant's Application was submitted on January 7, 2016 by way of an amendment to her original Application that had been submitted on December 31, 2015.

While the tenant had not specifically requested in her amendment to seek more time to dispute the 1 Month Notice, I have considered whether or not I could grant additional time as per her original Application which was seeking more time for the 10 Day Notice.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* in exceptional circumstances.

However Section 66(3) states 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.

I find the effective date of December 31, 2015 complies with the requirements outlined in Section 47(2). As noted above I found the tenant received the 1 Month Notice by November 30, 2015. As such, I find that in order to be granted an extension of time to dispute this Notice the tenant must have submitted her Application or amendment no later than December 31, 2015.

As the tenant's Application was only amended on January 7, 2016 to include seeking to cancel the 1 Month Notice, I find the tenant has submitted her Application after the effective date of the 1 Month Notice. Pursuant to Section 66(3), I am unable to consider an extension of the time limit to submit her Application to dispute the 1 Month Notice.

Section 47(5) of the *Act* states if a tenant who has received a notice under Section 47 does not make an application for dispute resolution within 10 days of receipt of the notice, 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 by that date.

As I have found the tenant is not entitled to additional time to submit her Application to dispute the 1 Month Notice and she did not submit her Application within the 10 days allowed, I find the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

As I have found the tenancy must end because the tenant did not file her Application within the required time frame to cancel the 1 Month Notice to End Tenancy I find the matters related to the 10 Day Notice to End Tenancy are moot and I make no findings on that Notice.

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on November 24, 2015 complies with the requirements set out in Section 52.

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 the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails 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: February 17, 2016

Residential Tenancy Branch