



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC CNR ERP MT OLC RP

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notices to end tenancy. Therefore, I will deal with the Tenant's request for more time to make his application and to set aside, or cancel the Landlord's Notices to End Tenancy issued for cause and unpaid rent. The balance of the Tenant's claim is dismissed, with leave to re-apply.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant and the Occupant on January 31, 2016. The Tenant and Occupant filed seeking more time to make their application; an order to cancel a 1 Month Notice to end tenancy for cause; and to cancel a Notice to end tenancy for unpaid rent.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

The hearing was conducted via teleconference and was attended by the Tenant, the Occupant, and four representatives for the Landlord. The owner, former and current managers, and a Tenant who acted as agent for the Landlord all meet the definition of a landlord, pursuant to section 1 of the Act. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise.

The Tenant testified that he wished to have his girlfriend testify on his behalf as his Agent. As such, the majority of the submissions made on behalf of the Tenant were submitted by the Occupant, (the Agent).

Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On February 3, 2016 and February 10, 2016 the Tenant submitted packages of evidence to the Residential Tenancy Branch (RTB). The Tenant affirmed that he served the Landlord with copies of the same evidence when the Occupant handed the evidence to a police officer who then handed them to the Landlord's office. The Landlords denied receiving any documents as evidence from the Tenant or a police officer.

On March 3 and 4, 2016 the Landlord submitted 3 separate packages of evidence to the RTB. The Landlord affirmed that they served the Tenant with copies of the same evidence that they had served the RTB. The Tenant acknowledged receipt of all of the evidence excluding copies of the Notices to end tenancy as those were received separately when they were first served upon the Tenants.

The Tenant and Landlord submitted copies of the same 1 Month Notice to end tenancy issued December 28, 2015 into evidence. Therefore, as this hearing was convened to hear matters pertaining to that Notice, I concluded I will consider the 1 Month Notice as evidence for this proceeding.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant filed his application for Dispute Resolution within the required timeframe?
2. If not, has the Tenant proven there were extinguishing circumstances which prevented him from filing his application within the required timeframe?

Background and Evidence

The Landlord and Tenant agreed to enter into a written tenancy agreement; however, the Tenant failed to sign the paperwork so the tenancy was based on a verbal tenancy

agreement. The Tenant began to occupy the rental unit as of December 1, 2015 and was required to pay rent of \$570.00 on or before the first of each month. On or before December 1, 2015 the Tenant paid \$130.00 towards the security deposit.

The former manager testified she was the manager who dealt with the Tenant and grant him possession of the rental unit. She argued the room was rented to only the Tenant and that he let his girlfriend move into the unit without permission from the Landlord.

The Owner and current manager testified the Tenant was served a 1 Month Notice to end tenancy on December 28, 2015.

The Tenant and his Agent confirmed they received the 1 Month Notice on December 28, 2015. They stated they did not file their application for Dispute Resolution sooner because they were on or going on their "Christmas holidays and what not". When I asked the Tenants to clarify their response they stated they received the 1 Month Notice on December 28, 2015 when they found it in the hallway. The Agent asserted they were busy taking off for Christmas holidays and when they got home they decided to see what they could do about the Notice at that time.

The Landlords submitted in addition to the disturbances caused this Tenant and Agent they had not paid rent for January, February, or March 2016.

The Agent confirmed the Tenant has not paid rent as described by the Landlord. When ask why they had not paid the rent the Agent stated they did not receive a 10 Day Notice they only received a written letter asking them to pay rent.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

An occupant is defined in Residential Tenancy Policy Guideline 13 where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent/landlord(s), tenant(s), and occupant) agree to enter into a written tenancy agreement to include the new occupant(s) as a tenant.

Based upon the aforementioned, I find the Tenant's girlfriend does not meet the definition of a tenant. Rather, the Tenant's girlfriend was an occupant because not all the parties to the tenancy agreed the girlfriend would be a tenant when the tenancy agreement was formed.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in **exceptional circumstance**. The extension cannot be granted for a date after the effective date of the Notice. [My emphasis added by bolding].

Residential Tenancy Policy Guideline 36 provides that the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time that is required would be very strong and compelling. Common law has noted that a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The 1 Month Notice to end tenancy includes important information for tenants as follows:

TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE.

[Reproduced as written on page 1 of the 1 Month Notice]

You have the right to dispute this Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application for Dispute Resolution within 10 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of this Notice (You can move out sooner). If you

do not file the Application or move out, your landlord can apply for an Order of Possession that is enforceable through the court.

[Reproduced as written on page 2 of the 1 Month Notice]

The undisputed evidence is the Tenant received the 1 Month Notice to end tenancy on December 28, 2015. The Tenant and Agent did not file the Tenant's application to dispute the 1 Month Notice until January 31, 2016; which was 34 days after the 1 Month Notice was received.

After consideration of the forgoing, I find the reasons given by the Tenant and his Agent as to why they did not apply to dispute the 1 Month Notice within the prescribed timeframes does not constitute exceptional circumstances. I make this finding in part because the Tenant and Agent confirmed receipt of the 1 Month Notice on December 28, 2015, and that Notice clearly outlined the Tenant had 10 days to dispute the Notice.

In addition, I find there was insufficient evidence to prove the Tenant and/or his Agent were prevented from filing their application for Dispute Resolution simply because they were preparing to leave on their Christmas holiday. The Tenant's application was filed on-line over the internet which is accessible worldwide. Therefore, I find the reason presented by the Tenant and Agent was an excuse and not an exceptional circumstance. Accordingly, I declined the Tenant's request for more time to file the application. Therefore, I find the application was not filed within the required timeframes and the application to dispute the 1 Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 1 Month Notice to end tenancy issued December 28, 2015 I find the Notice was issued on the approved form. The effective date of the Notice would automatically correct to be January 31, 2016, pursuant to section 53 of the *Act*. Therefore I find the 1 Month Notice issued December 28, 2015 to be a valid Notice.

Having dismissed the Tenant's application to dispute the 1 Month Notice and finding the 1 Month Notice to be valid, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant was not successful in his request for more time to file the application to dispute the 1 Month Notice. The Tenant's application was dismissed, without leave to reapply and the Landlord was granted an Order of Possession.

This decision is final, legally binding, and 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: March 17, 2016

Residential Tenancy Branch

