



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, CNL

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated May 18, 2016 and setting the end of tenancy for August 1, 2016
- b. An order to cancel the one month Notice to End Tenancy dated June 2, 2016 and setting the end of tenancy for August 1, 2016
- c. An order to cancel the 10 day Notice to End Tenancy dated June 2, 2016 and setting the end of tenancy for June 17, 2016

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on May 18, 2016. I find that the one month Notice to End Tenancy and the 10 day Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on June 2, 2016. The materials of the landlord indicate the tenant accepted delivery on June 7, 2016.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the Landlord by mailing, by registered mail to where the Landlord resides on June 10, 2016.

The Tenant filed an Amended to the Application for Dispute Resolution. It is undated and not signed by the tenant or anyone on behalf of the Tenant. It appears to be filed at the Residential Tenancy Branch Registry on June 20, 2016 as there is a date stamp on it to that effect. The tenant does not know when she served although it was included in the tenant's material that was given to the landlord until the end of June.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order to cancel the two month Notice to End Tenancy dated May 18, 2016 and setting the end of tenancy for August 1, 2016
- b. Whether the tenant is entitled to an order to cancel the one month Notice to End Tenancy dated June 2, 2016 and setting the end of tenancy for August 1, 2016
- c. Whether the tenant is entitled to an order to cancel the 10 day Notice to End Tenancy dated June 2, 2016 and setting the end of tenancy for June 17, 2016

Grounds for Termination:

The one month Notice to End Tenancy relies on the following grounds:

- Tenant is repeatedly late paying rent

The two month Notice to End Tenancy relies on the following grounds:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse
- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares

The 10 day Notice to End Tenancy alleges the tenant owes \$450 in rent and \$256.91 in utilities.

Background and Evidence

The tenancy began on December 20, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenancy agreement provided that the rent was to be paid by e-transfer. The tenant(s) paid a security deposit of \$600 prior to the start of the tenancy.

The landlord testified that she advised all prospective tenants this was to be a short term tenancy as she would need the rental unit to house her husband and crews employed by her family company in the summer.

The landlord testified the tenant has paid the rent late on the following occasions:

- The rent for February was not fully paid until February 3, 2016.

- The rent for March was not paid until March 6, 2016 (It was initially paid on March 5, 2016 but the tenant asked the landlord to hold off cashing the cheques and it was reissued on March 6, 2016 but reduced by \$5.00).
- The rent for April was not paid until April 4, 2016.
- The rent for May was not paid until May 3, 2016.
- The rent for June was not fully paid until June 20, 2016. The tenant paid \$750 of the June's rent on May 31, 2016 with the balance to be paid by a non profit organization. The cheque from the non profit organization did not arrive. Eventually they re-issued the cheque and the rent was fully paid on June 20, 2016. The landlord subsequently had a discussion with the non profit organization and it appears they had misfiled the cheque and it was never sent out in May.
- The landlord referred to text messages where the landlord was demanding the Tenant pay the rent on time.

The landlord testified the tenant failed to pay the full rent for June and \$450 was outstanding. The landlord served a 10 day Notice to End Tenancy on the Tenant by mailing, by registered mail to where the tenant resides. The evidence from Canada Post indicates the tenant received it on June 7, 2016. The landlord submits that she is entitled to an Order for Possession on the following basis:

- The tenant failed to file an Application to dispute the 10 day Notice to End Tenancy within 5 days as required on the Notice. She did not know when the tenant filed the Amendment as it is undated and did not have a stamp on it. The stamp on the arbitrator's file indicates the Amendment was filed on June 20, 2016.
- The landlord did not reinstate the tenancy when the rent was fully paid on June 20, 2016. At all times the landlord made it clear she wanted to regain possession of the rental unit.

The landlord seeks to regain possession of the rental unit pursuant to the 2 month Notice to End Tenancy based on the oral testimony of the landlord and the sworn affidavit of her husband.

- The landlord and the deponent operate a family run contracting business which work primarily from June until November. The company has secured contracts in the Vernon and Lumby area for the years 2014, 2015, and 2016.
- A major problem faced by the company is to secure appropriate accommodation for the contractors, tradesmen and staff.

- The respondent and I purchased the property for the purpose of using it as temporary residence for myself, contractors and staff of the company during the times that we had contracts in the area.
- From the Spring 2015 to December 2015 the property was constantly occupied by the husband, contractors or the company's staff.
- In December we decided to rent the property out on a short term basis so that we could supplement the company's slow months with rental income.
- We rented it to the tenant because she agreed she could only rent the property on a short term basis until June 2016.

The tenant disputes much of the landlord's evidence. She testified as follows:

- The idea this was to be a short term contract was not told to everyone.
- In an arbitration that was held on June 9, 2016 the arbitrator determined that Fortis gas was included in the rent and the tenant was not responsible to paying it. The tenant objected to the act of the landlord of returning the utility payment to the non profit organization that was helping out in the payment of the rent. She stated this money should be returned directly to her.
- The tenant testified the 10 Notice is invalid as it claim utilities in excess of the amount owed.

The tenant responded to the allegations of late payment as follows:

- The June late payment was not her fault as it was an error on the party of the non profit society.
- The May late payment was caused because she did not get her EI payment until May 1, 2016 and it was not processed until May 3, 2016.
- The March late payment was caused because the respondent was out of the country and there was confusion as to who it should be sent to.
- The landlord agreed to accept the late payments and by agreeing she has agreed not to evict her for late payment of rent.
- The landlord threatened to evict her on May 1, 2016 when she did not have the money to pay the rent and this traumatized her children.
- The landlord has agreed not to rely on her right to end the tenancy when she agreed with the tenant to work together with her.
- The landlord issued a 10 day Notice to End Tenancy in April in order for her to get financial assistance.

The tenant gave the following testimony disputing the 2 month Notice to End Tenancy:

- She felt that her rights have been violated by the landlord.

- There is a 0% vacancy rate in the area and it is impossible for her to find alternative accommodation for her 5 children and her.
- She does not believe the husband will move into the rental house.
- The landlord has violated her peaceful enjoyment when the landlord refused to accept rent payments from the non profit after June 20, 2016.

Tenant Witness #1 testified as follows:

- The landlord in the previous hearing stated that she intended to use the house for crews of the company.
- She has never had problems from other landlord accepting a rent payment from a non profit organization.
- The landlord was slow in faxing the utility bills to her after the previous hearing.

Analysis

I determined the landlord has established sufficient grounds to end the tenancy based on the one month Notice to End Tenancy for the following reasons:

Policy Guideline #38 Repeated Late Payment of Rents provides as follows:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions. (my emphasis)

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Based on the evidence before me I determined the tenant has paid the rent late on 5 occasions from December 2015 to June 1, 2016. I do not accept the submissions of the tenant that the landlord, by accepting her late payment has agreed to waive her legal rights. Similarly, I do not accept the submission of the tenant that by the landlord has waived her rights to being paid on time by working with the tenant to help get assistance from a non profit organization. In my view the failure of the non profit to get their portion of the rent to the landlord in a timely manner is not the landlord's responsibility. The non profit is acting as an agent for the tenant in those situations. There is a dispute as to whether the landlord contributed to the March late payment as the landlord was out of the country at the time. In any event, even if you do not consider the March late payment, the tenant has failed to pay the rent on time on at least 3 occasions. As a result I determined the landlord has sufficient grounds to end the tenancy based on the one month Notice to End Tenancy.

Further, I determined the landlord has established sufficient grounds to end the tenancy based on the 10 day Notice to End Tenancy. Section 46(4) provides as follows:

46(4) **Within 5 days** (my emphasis) after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The tenant received the 10 day Notice to End Tenancy on June 7, 2016. She failed to file an Application for Dispute Resolution or file an amendment to her application until June 20, 2016. While an arbitrator has the authority to grant an extension of time it can only be granted in exceptional circumstances. In this case the tenant was receiving advice from an Advocate and participated in a arbitration hearing on June 9, 2016. The Amendment does not seek more time to file the Application. The tenant failed to provide sufficient evidence to establish that exceptional circumstances existed.

Further, the landlord is entitled to an Order for Possession on the merits. As of June 2, 2015 the tenant owed \$450 in rent. There was a dispute relating to how much if any the tenant owed for utilities. Section 26(1) of the Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant had an obligation to pay the rent even if there was a dispute with respect to how much if any of the utilities the tenant was responsible to pay. The rent was not paid until June 20, 2016. The landlord made it clear to the parties she did not wish to reinstate the tenancy.

I ordered that the 2 month Notice to End Tenancy be cancelled because it is contradictory on its face. The 2 month Notice to End Tenancy alleges that the rental unit will be occupied by the landlord or close family member (parent, spouse or child; or the parent or child of the individual's spouse) and in another box it alleges that a family corporation owns the rental unit. The property must be owned either an individual or a family corporation. The landlord failed to present sufficient evidence to make this determination. .

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy based on the one month Notice to End Tenancy and the 10 day Notice to End Tenancy.. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy and the one month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice which is August 1, 2016. I denied the landlord's application to amend the Notice to set the effective date for July 31, 2016 as I determined the Tenant would be unduly prejudiced by such an amendment.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective August 1, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: July 12, 2016

Residential Tenancy Branch