



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, ERP, MNDC, MT, O, OLC, PSF, RP (Tenant's Application)
FF, MNDC, MNR, MNSD, OPR (Landlord's Application)

Introduction

This hearing convened as a result of cross applications.

In the Tenant's Application for Dispute Resolution filed on August 19, 2016 she requested the following relief:

- an Order canceling a Notice to End Tenancy for Unpaid Rent or Utilities issued on August 5, 2016 (the "Notice");
- an Order for more time pursuant to section 66(1) to make her application to cancel the Notice;
- an Order that the Landlord make repairs, emergency and otherwise;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the Regulations, or the tenancy agreement;
- an Order that the Landlord provide services or facilities required by law; and,
- a Monetary Order for \$6,000.00 for money owed or compensation for damage or loss under the *Residential Tenancy Act*.

In the Landlord's Application for Dispute Resolution filed on August 26, 2016 the Landlord requested the following relief:

- an Order of Possession based on the Notice;
- a Monetary Order for \$455.00 for money owed or compensation for damage or loss under the *Residential Tenancy Act*;
- authority to retain the Tenant's security deposit; and

- recovery of the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue Relief Sought by Parties

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the parties' other claims. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

This hearing was set for one hour. As noted in the introduction, the parties each had numerous claims before me. The Tenant claimed she had paid rent for October 2016. The Landlord disputed this claim. The parties did not even agree on the amount of rent to be paid; notably, the tenancy agreement was not in evidence.

Consequently, it is my determination that to consider the parties' monetary claims would have likely resulted in the hearing exceeding the one hour set aside and possibly resulting in an adjournment. I find that such an adjournment would have been highly prejudicial to the Landlord.

Rule 1.1 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

I exercise my discretion to dismiss the balance of the parties' claims and informed them that the only matters I would deal with during the hearing were the Tenant's application for more time, as

well as her application to cancel the Notice as well as the Landlord's application for an Order of Possession.

I confirm that at the end of the hearing, and after the Tenant had disconnected from the line, J.B. attempted to convince me that I should consider their monetary claim. I did not hear further evidence from the Landlord and reiterated that such a claim was dismissed with leave to reapply.

Issues to Be Decided

1. Should the Tenant be granted more time pursuant to section 66?
2. Should the Notice be cancelled?
3. Is the Landlord entitled to an Order of Possession?

Background Evidence

The Tenant testified that she received the Notice on August 5, 2016. She filed for dispute resolution on August 19, 2016. As she filed outside the five days required by section 46 of the *Act*, it is necessary to consider whether she should be granted more time to apply pursuant to section 66.

The Tenant provided the following reason as to why she did not file within the required time. She stated that she attempted to obtain the services of an advocate, and was unable to do so.

The Tenant also stated that she has only paid half of the rent owing for August, September and October 2016 as she has paid rent for another rental unit where she was forced to move her children due to the fact that she says there are bed bugs in the rental unit.

In response to the Tenant's request for more time, J.B. confirmed that the Landlord's position that the Tenant has not proven exceptional circumstances. J.B. further stated that it was the Landlord's position that the Tenant had available to her enough information to file an Application as that information is contained on the Notice.

Analysis

On the first page of the Notice, the Tenant is clearly informed she must respond to the Notice as follows:

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

You have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

The second page of the Notice provides the following additional information:

If within 5 days you do not pay the rent and utilities (if applicable) or make an application for dispute resolution, the landlord can apply for an order of possession through the Direct Request process.

...

Disputing the Notice

- The tenant can make an application for dispute resolution within 5 (five) days after receiving the *10 Day Notice to End Tenancy* (form RTB-30)

...

Important Facts

- The tenant is not entitled to withhold rent unless ordered by an arbitrator.

...

For More Information

- Refer to *A Guide for Landlords and Tenants in British Columbia* available on the RTB website and offices.
- Visit the Residential Tenancy Branch office at 400 – 5021 Kingsway, Burnaby BC

Section 66 of the *Act* provides me authority to extend and change a time limit imposed by the *Act* and reads as follows:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

An extension of time will only be granted if the party has proof that an exceptional circumstance occurred that prohibited them from filing their application within the statutory timeframe.

Residential Tenancy Policy Guideline 36 sets out the following factors to consider when an application for more time is requested and requires the applicant to show that:

- did not willfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

In consideration of the above, I find the Tenant has failed to prove that exceptional circumstances prevented her from filing within the prescribed times. I agree with the Landlord's submissions that ample information is provided on the Notice for a Tenant to appreciate the steps required to dispute the Notice and consequence of failing to file in time. Further, the

Tenant could have availed herself to online resources as well as assistance from the Residential Tenancy Branch. Failing to do so was unreasonable, and does not create exceptional circumstances as contemplated in section 66 of the *Act*.

As I have dismissed the Tenant's claim for more time, I similarly dismiss her request that I cancel the Notice pursuant to section 46; for greater clarity section 46 reads as follows:

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days 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.
- (6) If
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
 - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Tenant having failed to apply within five days, and being denied more time to do so, is conclusively presumed to accept the end of the tenancy. Consequently, her request that I cancel the Notice is dismissed.

Accordingly, and pursuant to section 55, the Landlord is granted an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and may be filed and enforce in the B.C. Supreme Court.

The Landlord, having been successful, is entitled to recovery of the \$100.00 filing fee. Pursuant to sections 38 and 72 of the *Residential Tenancy Act*, I authorize the Landlord to retain \$100.00 of the Tenant's security deposit as compensation for the filing fee paid.

Conclusion

The Tenant's request for more time pursuant to section 66(1) is dismissed. Having failed to file within the time required by section 46 the Tenant is conclusively presumed to accept the end of the tenancy and must vacate the rental unit.

The Landlord is granted an Order of Possession and may retain \$100.00 of the Tenant's security deposit as compensation for the filing fee paid.

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: October 19, 2016

Residential Tenancy Branch