Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; both landlords; their legal counsel and a witness.

Residential Tenancy Branch Rule of Procedure 6.10 states that disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

During the hearing some of the participants continued to try to engage in direct conversations and respond to each other without consideration for my directions on how to participate in the call. I reiterated my instructions to all parties at least 3 times that no one was to engage in direct conversation and that they were not to speak until I directed them to do so.

After these repeated directions the male landlord and tenant both continued to fail to follow them. It was early in the hearing that the male landlord continued disregard for these directions that repeatedly impeded my ability to conduct the hearing. I excluded the male landlord from the proceedings. The female landlord and their legal counsel represented the landlords for the remainder of the hearing.

Initially I allowed the tenant to continue to participate but despite two additional warnings the tenant continued to fail to follow my directions. As a result, I also excluded the tenant from the remainder of the proceeding.

I note that at the time I had expelled the tenant from the hearing the landlord had presented evidence and testimony regarding two of the three causes identified on the 1 Month Notice to End Tenancy for Cause but that the tenant had provided no testimony or documentary evidence in response to these two causes.

At the outset of the hearing the tenant requested an adjournment. The tenant stated that he had not received the landlords' evidence until the day before the hearing and that it had been placed on the windshield of his vehicle. He stated he needed time to review the submissions and prepare a response.

The landlords' legal counsel testified the landlords' evidence package was served on December 23, 2016 by placing it in the mailbox at the residential property. The landlords' witness testified that they reside in the upper unit of the residential property and the package sat in the mailbox for "a couple of weeks" and that since the tenant had not picked it up they placed it on the windshield of the tenant's vehicle, the day before the hearing.

The tenant submitted that at the start of the tenancy he and the male landlord discussed that the tenant would not be using the mailbox on the property for his mail. I note the tenant did specify a mailing address on his Application for Dispute Resolution that is different than the dispute address.

The female landlord submitted that she was not aware of such a conversation. The tenant testified that the conversation occurred with the male landlord, who had left the hearing by the time this issue was discussed.

Section 88 of the *Residential Tenancy Act (Act)* allows a landlord to serve a document to a tenant by leaving a copy with the person; sending a copy by mail or registered mail to the address at which the tenant resides; sending a copy by mail or registered mail to a forwarding address provided by the tenant; leaving a copy at the residence with an adult who apparently resides with the tenant; **by leaving a copy in a mailbox or mail slot for the address at which the tenant resides;** by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or by transmitting a copy by fax number provided as a service address by the tenant. [My emphasis added]

Based on the evidence and testimony before me and in consideration of the requirements under Section 88 of the *Act* I find the landlord served the tenant sufficiently in accordance with Section 88 of the *Act* by leaving their evidence package in a mailbox at the address where the tenant resides.

I find there is insufficient evidence by the tenant to establish that the landlords were aware that the tenant never accessed any mail from the mailbox where he lives. I find it is reasonable, on a balance of probabilities, that when an address has only one mailbox it is shared by both the upper and lower occupants of a residential property.

Section 90 of the *Act* stipulates that documents served by placing them in a mailbox at the address where the party resides are deemed to be received on the third day after they are placed in the mailbox.

Based on the testimony of both parties, I find the tenant's failure to take the landlords' evidence from the mailbox was a deliberate attempt to avoid service of these documents. As a result, I find the tenant would have received the landlords' evidence December 26, 2016 had he not deliberately attempted to avoid service.

Rule of Procedure 3.15 states the respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

As I have determined the tenant would have received the landlords' evidence by December 26, 2016 had he not deliberately attempted to avoid service I find he would have the landlord's evidence 11 days prior to the hearing and in compliance with Rule of Procedure 3.15.

Residential Tenancy Branch Rule of Procedure 7.9 states that 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.

Upon consideration of the above criteria and the submissions of both parties, I find that the need for the adjournment arises directly and completely out of intentional actions by the tenant who has requested the adjournment. I find this is a deliberate attempt to delay the process which is a significant prejudice to the landlord to delay this process. As such, I dismiss the tenant's request for an adjournment.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act.*

Should the tenant be unsuccessful in seeking to cancel 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 landlord testified the tenancy began on May 1, 2016 for a 6 month and 1 day fixed term tenancy for a monthly rent of $900.00 due on the 1st of each month with a security deposit of $500.00 paid. The landlord also clarified that the tenancy agreement included a section entitled additional information under what is included in rent that stipulates $900.00 plus cable/internet to a maximum of $980.00.

The landlords submitted into evidence the following documents:

- A copy of a 1 Month Notice to End Tenancy for Cause issued on November 20, 2016 with an effective vacancy date of December 31, 2016 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- A copy of a Proof of Service document that confirms the tenant was served the 1 Month Notice to End Tenancy for Cause on November 20, 2016 at 6:00 p.m. personally. I also note the tenant on his Application for Dispute Resolution that he had received the 1 Month Notice on November 20, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on December 13, 2016 with an effective vacancy date of December 25, 2016 due to $980.00 in unpaid rent due on December 1, 2016.

The landlord submitted that on at least 5 occasions prior to the issue of the 1 Month Notice the tenant had been late paying rent. The landlord had submitted bank statements showing rental payments dated August 5, 2016; September 2, 2016; October 3, 2016; and November 2, 2016.

The tenant had asserted that he had been overpaying rent during the tenancy by $80.00 per month but provided no testimony regarding any of the dates that payments were made.

The landlord submitted substantial testimony regarding the tenant's behaviour to towards the other occupants in the residential property. The landlord cited the playing of loud music and an ongoing harassment by the tenant towards the occupants of the

other rental unit on the property. The landlords' witness provided specific dates of disturbances in both the landlords' written submissions and the witness's oral testimony.

Analysis

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:

a) The tenant is repeatedly late paying rent;
b) 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,
c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
    i. 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.

Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

Despite the tenant's submission that the rent was only $900.00 and that he had been overpaying rent by $80.00 per month I find the payments listed on the bank statements are all made on dates after the 1st of the month.

I find the landlord has provided sufficient undisputed evidence and testimony to confirm that on least 4 occasions since the start of the tenancy the tenant was late payment rent. As such, I am satisfied the tenant has been late paying rent a sufficient number of times to warrant ending the tenancy.

As a result, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

As I have determined the tenancy may end as a result of the repeated late payment of rent I make no findings of fact or law in relation to the other causes identified in the 1 Month Notice to End Tenancy for Cause issued on November 20, 2016.

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 20, 2016 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: January 06, 2017

Residential Tenancy Branch