



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant and the landlord.

At the outset of the hearing I confirmed with the female tenant that her name was reversed from the way it was written on the Application for Dispute Resolution. I amend this Application to reflect the correct female tenant's name.

Also at the outset, I confirmed with the tenant that they had not received a 2 Month Notice to End Tenancy for Landlord's Use of Property at any time and that they had only received the 1 Month Notice to End Tenancy for Cause that the landlord submitted into evidence.

I noted, also, that in the landlord's evidence was a copy of his own Application for Dispute Resolution. However, the landlord confirmed that he did not pay a fee because he was advised that because there was already a file number he just had to submit the documents.

Upon review of the file I note that the landlord's submissions were treated only as evidence and never processed as an Application for Dispute Resolution, as a result, I have not heard the landlord's Application.

Residential Tenancy Branch Rule of Procedure 2.3 states 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 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenants' claim for compensation for utility costs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants monetary claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenants' monetary claim. I grant the tenants leave to re-apply for this other claim.

I note that Section 55 of the *Residential Tenancy Act (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*.

During the hearing the tenant indicated that she could have a witness participate in the hearing if she could drive about 5 minutes away so the witness could use her phone as there was no other phone available to the witness. As it is the party's responsibility to have all evidence and witnesses available at the time the hearing starts and the tenant would have to drive and participate in this hearing at the same time, I did not allow the tenant to drive to allow this witness.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 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 submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 29, 2015 for a 2 year fixed term tenancy beginning on June 1, 2015 for a monthly rent of \$1,050.00 due on the 1st of each month with a security deposit of \$525.00 paid. The agreement included an addendum of 12 additional terms attached; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on February 21, 2017 with an effective vacancy date of March 31, 2017 citing the tenant has allowed an unreasonable number of occupants in the unit/site and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted that he served the 1 Month Notice to End Tenancy to "Melissa" on February 21, 2017. The tenant explained that Melissa is her aunt who was staying with them when the Notice was served and continues to stay with them as of the date of this hearing. The tenant confirmed Melissa is over 18 years old. The tenant could not confirm on what date the Notice was received by Melissa.

I asked for clarification from the tenant as to why it took so long to submit their Application for Dispute Resolution. The tenant testified that she knew that the male tenant had indicated that there was some back and forth communication between Service BC and the RTB regarding his Application which caused the delay in the submission of their Application. The Application did not include a request to be granted more time to submit their Application.

I confirmed from the documents submitted, specifically the tenants' Application for Dispute Resolution, that the male tenant dated the Application March 6, 2017; that the local Service BC

office faxed the document to the Residential Tenancy Branch (RTB) on March 6, 2017; and that the RTB dated stamped receipt of the Application on March 6, 2017.

I also noted that after the original Application was processed it was sent back to the Service BC office on March 7, 2017 for the tenant to make some changes to the Application which will later faxed back to the RTB on March 7, 2017.

The parties confirmed that the tenants only paid ½ of the rent for the month of April 2017. The tenant submitted that they held back half of the rent because they have not been able to collect utility costs from a previous occupant on the residential property.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or both of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) 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(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

While I accept the tenant had to make some changes to the Application for Dispute Resolution after it was submitted, I find that the original submission date for the Application was March 6, 2017, based on the documentation recorded on the document itself.

Section 88(e) of the *Act* allows documents when required to be served from one party to the other by leaving a copy at the person's residence with an adult who apparently resides with the person.

As there is no evidence from the tenants that the 1 Month Notice was served to the tenants in accordance with Section 88(e) on a date other than February 21, 2017, I find the landlord has established the tenants were received the notice on February 21, 2017.

As a result, I find the tenants had until March 3, 2017 to file their Application for Dispute Resolution seeking to cancel the Notice. As I have found above that the tenants did not submit their Application before March 6, 2017 I now find that the tenants failed to file their Application

within 10 days as allowed under Section 47(4). Pursuant to Section 47(5), I find the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the property in accordance with the Notice issued on February 21, 2017.

Therefore, I dismiss the tenants' Application for Dispute Resolution seeking to cancel the 1 Month Notice to End Tenancy. In acknowledgement of the payment of ½ of the rent owed for the month of April 2017 I order that the tenant's must vacate the rental unit no later than April 15, 2017, pursuant to Section 68(2) of the *Act*.

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 February 21, 2017 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

Based on the above, I find the landlord is entitled to an order of possession effective **April 15, 2017 after service on the tenants**. This order must be served on the tenants. If the tenants fail 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: April 05, 2017

Residential Tenancy Branch