Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, FF

Introduction

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

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

The parties confirmed that the tenant served the landlord with his evidence package personally on Thursday, May 11, 2017. The tenant also testified that he had provided a 2nd copy of his evidence package to his local Service BC office on May 12, 2017.

During the hearing I advised the tenant I had not received his evidence and there was no record of it being provided. While I ordered the tenant to fax the evidence to the Residential Tenancy Branch at the end of the hearing, the package he submitted on May 12, 2017 was provided to me, after the hearing.

The tenant submitted that he could not serve his evidence any sooner because he had been injured and his right hand was in a cast. He stated that his only method of transportation was his "street bike" and was ordered by his doctor to not use his right hand for any labour or activities for 4 weeks.

The tenant submitted that as a result he had to wait until his mother got home from Hawaii to have her help him serve the documents to the landlord and the Service BC office.

The tenant also stated that he could not submit his evidence with his original Application made on April 10, 2017 or submit his Application any earlier than that date because of his injury. However, the landlord pointed out and I confirmed from the tenant's evidence that his doctor's visit for his injury was April 26, 2017.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application

it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

I find that the tenant's testimony regarding his inability to file his Application and evidence on or before April 10, 2017 is inconsistent with his own evidence of his injury and he could have submitted his evidence sometime before April 26, 2017 when he was treated for his injury.

However, the Rules of Procedure do allow for the applicant to serve the respondent with their evidence up to 14 days prior to the hearing. As such, I find that if the tenant relied on that end date and then was injured in a manner that prevented him from completing service until the week prior to the hearing it is reasonable to allow the tenant additional time for service to the landlord. As a result, I have considered the tenant's documentary evidence and his oral testimony.

The tenant submitted that he had not received the landlord's evidence because she sent it by certified mail and he doesn't have sufficient identification to claim certified mail from Canada Post. He stated that when he served her with his evidence he asked her for a copy of the evidence and she refused.

The landlord confirmed that she had originally served the tenant with a copy by registered mail but that she did not make any additional copies. As such, she could not provide the tenant with a copy of her evidence because she did not have one available.

While the use of registered mail to serve evidence is an accepted method of service when there is a legitimate reason that prevented a recipient from claiming their registered mail, I must allow that the evidence was not received by the intended recipient.

In the case before me, I find the tenant has not received the landlord's evidence. As a result, I have not considered the landlord's documentary evidence in this decision.

At the outset of the hearing the tenant clarified that he had not received any notification of a rent increase but that he asserts the landlord wants to end the tenancy so she can increase the rent by $500.00 per month.

As the tenant has not received a notice of rent increase or has not started paying a rent increase I advised the tenant that he cannot dispute a landlord's intentions to increase the rent on a future tenancy. I amend the tenant's Application to exclude the issue of disputing a rent increase.

I advised the parties at the start of the hearing that the landlord had to establish only 1 of the 5 identified grounds or causes listed on the 1 Month Notice to End Tenancy to establish the right to end the tenancy. While both parties provided a significant amount of testimony regarding all of the issues identified on the 1 Month Notice to End Tenancy I have recorded only relevant submissions and findings regarding the establishment of the singular cause sufficient to end the tenancy, as noted above.

I also 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*.

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 parties agreed the tenant moved into the rental unit in October 2014 for a monthly rent of $1,000.00 due on the 1st of each month with a security deposit of $500.00 and a pet damage deposit of $500.00 paid.

The parties agreed that the first 2 years of the tenancy were 2 distinct 1 year consecutive fixed terms. The tenant originally stated that they signed 3rd fixed term agreement in October 2016 but later stated he did not have a copy of a 3rd agreement after the landlord stated she specifically did not enter into a 3rd fixed term.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on April 1, 2017 with an effective vacancy date of April 30, 2017 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has engaged in illegal activity that has or is likely to damage the landlord's property; the tenant has caused extraordinary damage to the unit/site or property/park; and the tenant has not done required repairs of damage to the unit/site.

The landlord testified that prior to the issuance of the 1 Month Notice the tenant had been late paying rent for the last 1½ years. The tenant agreed that he had been paying rent late during that period but that since he caught up on his rental arrears his rent payments have been made on time. The tenant referred to his evidence that includes a

listing of late payments provided by the landlord. He state that he and the landlord were "in agreeance" with these payments.

The listing including rent being paid on the following dates:

Rental Month	Payment dates
December 2015	January 5, 2016; January 28, 2016; February 12, 2016
January 2016	February 12, 2016; March 8, 2016; April 11, 2016
February 2016	April 11, 2016; May 19, 2016
March 2016	May 19, 2016
April 2016	May 19, 2016; June 2, 2016
May 2016	June 7, 2016
June 2016	August 23, 2016
August 2016	November 14, 2016;
September 2016	January 15, 2017

The tenant's evidence included receipts for the payment of rent for the months of January, February and March 2017 on March 17, 2017 and rent for April 2017 dated April 1, 2017 and for May 2017 dated April 29, 2017. In addition there was a notation indicating that the landlord agreed to a reduced rent owed by $2,500.00 down to $3,000.00 "for your gravel that I didn't order or want" signed by "Lee".

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. 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.

From the submissions of both parties, including the agreement of the tenant, I find the tenant has been late for his rent payments for every month of 2016 and for the months of January, February, and March 2017. As such, I find the tenant has been late paying rent for at all of the 15 months prior to the issuance of the Notice and the landlord is entitled to end the tenancy for these repeated late payments, pursuant to Section 47 of the *Act* and Policy Guideline #38.

Therefore, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 April 1, 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*.

As to the effective date of the Notice Section 53 of the *Act* allows that if a landlord or tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the applicable section of the *Act*, the effective date is deemed to be the earliest date that complies with the relevant section.

A notice under Section 47 of the *Act* must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As such, a notice to end tenancy issued under Section 47 on April 1, 2017 cannot be any earlier than May 31, 2017. Pursuant to Section 53, the effective of the subject Notice to End Tenancy is deemed to be corrected to May 31, 2017.

Conclusion

Based on the above, I grant the landlord an order of possession effective **May 31, 2017 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: May 17, 2017

Residential Tenancy Branch