Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice").

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord and the agent for the Landlord (the "Agent"); all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that that was accepted for consideration in the hearing in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, a copy of the decision will be mailed to them at the address provided in the Application. At the request of the Landlord, a copy of the decision and copies of any Order of Possession issued will be mailed to them at the address provided in the hearing.

Preliminary Matters

Jurisdictional Matters and Evidence

In the hearing the Tenant read a letter she stated was sent from her lawyer to the Landlord in relation to this matter. The letter stated that the Tenant has a dispute with her former employer, who is one of the Respondents in this matter, and that a complaint has been filed in relation to that dispute with the Employment Standards Branch. The Letter also stated that the Tenant has directed the lawyer's office to file a Notice of Civil Claim at the B.C. Supreme Court seeking damages in relation to the employment dispute. Further to this, the letter encouraged the parties to seek an adjournment in relation to the matter before me and stated that if the hearing

proceeds, the Tenant will take the position that any eviction is sufficiently connected to the employment dispute and the B.C. Supreme Court Claim.

The Landlord confirmed that they received a copy of the letter on the morning of the hearing; however, the letter was not before me for consideration. Given that the letter related to whether I have jurisdiction to decide this matter, I ordered that the parties submit a copy to the Branch by fax or online no later than 4:30 P.M. on the date of the hearing, pursuant to section 3.19 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). I accepted evidence and testimony from the parties in relation to this matter in the hearing and advised them that I would review the requested documentation and render my decision in writing with regards to whether I have jurisdiction to decide the matter.

The Landlord faxed a copy of the above noted evidence within the given timeframe, which I received and accepted for consideration. The Tenant was unable to submit a copy of the above noted evidence within the timeline noted above; however, a copy was received by the Residential Tenancy Branch (the "Branch") the following day. The copy of the letter received by the Tenant formed part of a text message chain that was not requested or permitted to be submitted after the start of the hearing. Rule 3.19 of the Rules of Procedure states that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. Pursuant to rule 3.19 of the Rules of Procedure, I accepted the requested document for consideration and excluded all other contents of the text message chain from consideration in this matter.

Given the above, the first matter for me to determine is whether I have jurisdiction to decide this matter. Section 58(2)(c) of the *Act* states that except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this part unless the dispute is linked substantially to a matter that is before the Supreme Court.

Although the Tenant and the Tenant's lawyer have submitted that this matter is sufficiently connected to a B.C. Supreme Court claim, the letter from the lawyer states only that they have been directed to file a Notice of Civil Claim at the B.C. Supreme Court, not that such a claim has actually been filed. The Tenant also testified that to her knowledge, a claim has not yet been filed in B.C. Supreme Court. Further to this, even if such a claim should exist, that claim has not be submitted for my consideration and therefore I find that there is insufficient evidence before me to conclude that this dispute is substantially linked to a matter that is before the Supreme Court.

In any event, for the following reasons I find that this is a matter over which the respected court does not have jurisdiction pursuant to section 58(3) of the *Act* which states that except as provided in subsection (4), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution under this Act. As stated above, I have already found that there is insufficient evidence before me to establish that as of the date and time of the hearing, this dispute was substantially linked to a matter that

is before the Supreme Court of British Columbia. As this matter does not relate to a One Month Notice to End Tenancy for End of Employment, I find it unreasonable to conclude that this matter is substantially linked to the Tenant's claim against her former employer. Further to this, as the Application relates to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") served pursuant to section 46 of the *Act*, I find that it is a matter that must be submitted to the director for dispute resolution pursuant to section 58 of the *Act* and I therefore accept jurisdiction to decide this matter.

Adjournment request

The Tenant requested an adjournment of this matter in order to await the outcome of her employment related claims and the Landlord objected to this request. Rule 7.8 states that at any time after the dispute resolution hearing begins, the arbitrator may adjourn the hearing to another time at a party's request and that the arbitrator will determine whether the circumstances warrant an adjournment of the hearing. Without limiting the authority of the arbitrator to consider other factors, rule 7.9 of the Rules of Procedure outlines criteria that the arbitrator will consider in assessing whether to allow or disallow a party's request for an adjournment including but not limited to the oral or written submissions of the parties, the likelihood of the adjournment resulting in 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.

In the hearing I considered the Tenant's request, in conjunction with section 7 of the Rules of Procedure and in light of the Landlord's objection, and the request for an adjournment was denied for the following reasons. I found that an adjournment is not required in order to provide a fair opportunity to be heard as both parties had sufficient notice of the date and time of the hearing, no concerns were raised by either party regarding the service or exchange of documentary evidence, and all parties materially affected by the Application were present. Further to this, I found that the possible prejudice to the Landlord in adjourning the hearing was significant as the Application relates to a Notice to End Tenancy resulting from the non-payment of several months of rent.

Naming of Parties to the Dispute

At the outset of the hearing the Respondent E.S. stated that the landlord and owner of the property is actually a holding company, of which she is the majority shareholder, and that she is in fact an agent for the landlord. The Tenant testified that E.S. is the owner of the holding company and that E.S. is her landlord. Both parties agreed that no written tenancy agreement exists.

I note that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") which is the subject of this dispute lists E.S. as the landlord. Further to this, section 1 of the *Act*

defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. As a result of the above, I find that E.S. meets the definition of a landlord under the *Act* and will therefore be referred to as the "Landlord" in this decision. As the Landlord testified that the rental unit is owned by the holding company, pursuant to section 4.2 of the Rules of Procedure and #43 of the Residential Tenancy Policy Guideline (the "Policy Guideline"), I have amended the Application to reflect that the Respondent in this matter as E.S. who carrying on business as the Landlord under the holding company name.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the 10 Day Notice under the *Act*?

If the Tenant is not successful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

Although no written tenancy agreement exists, both parties agreed that the tenancy began sometime in 2012, that no security deposit was required or paid, and that rent is due on the first day of each month. Both parties agreed that at the start of the tenancy the rent was $800.00 and that on June 12, 2017, the Tenant was served with a letter from the Landlord stating that effective September 1, 2017, the monthly rent would increase to $840.00 per month. A copy of the letter was not before me for consideration but both parties agreed that the above noted information is correct and that a Notice of Rent Increase – Residential Rental Units (a "Notice of Rent Increase") form was not used.

The Landlord testified that the Tenant only paid a portion of the rent owed for October, 2017, and that when she failed to pay the remaining $70.00 balance owed for October plus the $840.00 in rent owed for November on November 1, 2017, a 10 Day Notice was served.

The 10 Day Notice in the documentary evidence before me, dated November 2, 2017, has an effective vacancy date of November 13, 2017, and states that as of November 1, 2017, the Tenant owed $910.00 in outstanding rent. Although the Landlord testified that the 10 Day Notice was posted to the door of the Tenant's rental unit on November 2, 2017, the Tenant testified that it was actually placed on her front steps. In any event, the Tenant acknowledged receiving it on November 3, 2017.

The Tenant testified that the Landlord is her former employer and illegally deducted the September rent from her pay cheque. The Tenant testified that she withheld the outstanding

rent for October, and the full rent for November, December, and January due to this illegal wage deduction and an Employment Standards Claim she has filed against the Landlord. Although the Tenant stated that she has completed some repairs to the rental unit over the course of the tenancy, she acknowledged that they were not emergency repairs and did not submit any documentary evidence in support of this testimony.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

> **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.

However, section 46(4) and 46(5) of the *Act* also state:

> **46** (4) Within 5 days after receiving a notice under this section, the tenant may
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> (a) pay the overdue rent, in which case the notice has no effect, or
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> (b) dispute the notice by making an application for dispute resolution.
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> (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
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> (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
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> (b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act,* I find that the Tenant was served with the 10 Day Notice on November 3, 2017, the day she acknowledged receiving it.

Section 26 of the *Act* states that 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.

In the hearing both parties agreed that the Tenant had been served a letter from the holding company in June of 2017 stating that effective September 1, 2017, the Tenant's rent would be increased to $840.00. A landlord must not increase rent except in accordance with the *Act* which states, under section 42, that a notice of rent increase must be in the approved form.

Policy Guideline #43 states that a Tenant's rent cannot be increased if they do not receive proper notice in the approved form. As the Tenant received a letter increasing their rent, not a Notice of Rent Increase as prescribed by the *Act*, I find that the Tenant's rent was not lawfully increased and therefore remained at $800.00 per month.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice is incorrect as it was based on outstanding rent amounts for September and October of 2017 at $840.00 per month. However, as there is no monetary claim before me for rent, I find that the matter I must decide is whether the 10 Day Notice is valid, not the exact amount of rent outstanding. As the Tenant acknowledged that they did not pay any rent for October, 2017, I find that at least some amount of rent was outstanding at the time that the 10 Day Notice was served and I therefore find that the 10 Day Notice is valid.

Although the Tenant provided testimony as to why the rent was not paid, ultimately she did not provide any documentary evidence or testimony to establish that she had a right under the *Act* to deduct all or a portion of the $800.00 in rent owed for October, 2017, and her claim for the cancellation of the 10 Day Notice is therefore dismissed without leave to reapply. Further to this, I note that the Tenant acknowledged that as of the date of the hearing, rent remains outstanding for October 2017 – January 2018.

Based on the above, I must now turn my mind to whether the 10 Day Notice issued by the Landlord complies with section 52 of the *Act* which states the following:

Form and content of notice to end tenancy

> **52** In order to be effective, a notice to end a tenancy must be in writing and must
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> > (a) be signed and dated by the landlord or tenant giving the notice,
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> > (b) give the address of the rental unit,
> >
> > (c) state the effective date of the notice,
> >
> > (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> >
> > (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> >
> > (e) when given by a landlord, be in the approved form.

As the 10 Day Notice is signed and dated by the Landlord, gives the address for the rental unit, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, I find that the

Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed and the Tenant acknowledges that rent has not been paid for several months, the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

The Tenants Application is dismissed and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and 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 30, 2018

Residential Tenancy Branch