



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT, ERP, RP, OLC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to file this Application; for an Order requiring the Landlord to make repairs; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application.

The Tenant stated that on November 23, 2017 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Notice to End Tenancy that is the subject of this dispute were sent to the Landlord, via registered mail. The Landlord stated that these documents were received in an enveloped post marked December 06, 2017. As the Landlord acknowledged receipt of the documents, the evidence was accepted as evidence for these proceedings.

On February 05, 2018 the Landlord submitted 23 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on January 26, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. On several occasions the Tenant was prevented from speaking when he was making disparaging comments about the Landlord and when he was raising issues that were not relevant to the issues in dispute.

The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter #1

The Tenant stated that on November 23, 2017 he submitted 6 pages of evidence to a Service BC office. The Tenant was advised that I was not in possession of any evidence from the Tenant, with the exception of the Notice to End Tenancy that is the subject of this dispute. The Tenant was asked to describe the evidence he submitted and he was unable to do so.

The Tenant explained that he first attended the Service BC office on November 23, 2017 but was unable to file his Application for Dispute Resolution on that date, which appears to be because he does not have access to the internet. He stated that he returned to the Service BC office a few days later, at which time someone helped him complete his Application for Dispute Resolution. Residential Tenancy Branch records shows that the Tenant's Application for Dispute Resolution was submitted to a Service BC office on November 28, 2017.

On the basis of the Tenant's testimony I find that the Tenant brought documents to the Service BC office on November 23, 2017 with the intent of submitting them as evidence. I find, on the balance of probabilities, that these documents were not submitted on November 23, 2017, given that the Tenant was not able to file his Application for Dispute Resolution on that date. As there is insufficient evidence to establish that additional evidence was submitted by the Tenant when the Application for Dispute Resolution was filed, or at any time thereafter, I am unable to consider additional evidence.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

At these proceedings I will consider the most urgent issue in dispute, which is the continued possession of the rental unit. I will, therefore, consider the Tenant's application to cancel a Notice to End Tenancy, his application for more time to file the application to cancel the Notice to End Tenancy, and his application to recover the fee for filing this application.

The remaining issues in dispute are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy and, if so, should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began on June 01, 2013 and rent of \$700.00 is due by the first day of each month.

The Landlord stated that on November 10, 2017 he mailed a One Month Notice to End Tenancy for Cause to the Tenant. The Tenant stated that he received this Notice to End Tenancy on November 16, 2017.

The Landlord and the Tenant agree that the reasons cited on the Notice to End Tenancy for ending the tenancy were that the Tenant was repeatedly late paying rent and that the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit or the property. The parties agree that the Notice declares that the Tenant must vacate the rental unit by December 30, 2017.

The Landlord stated that the Tenant was regularly late paying his rent. He stated that rent in 2017 was paid on the following dates:

January – Paid on January 12, 2017
February – Paid on February 13, 2017
March - Paid on March 28, 2017
April – Paid on time
May - Paid on July 18, 2017
June - Paid on June 09, 2017
July - Paid on July 18, 2017
August - Paid on August 10, 2017
September – Paid on time
October - Paid on October 19, 2017
November - Paid on November 15, 2017
December – Paid on time.

The Tenant stated that he does not recall when his rent was paid in 2017, although he does not dispute the dates provided by the Landlord.

The Tenant identified a variety of personal reasons why the tenancy should be allowed to continue but he was unable to articulate any legal reason for setting aside this One Month Notice to End Tenancy for Cause

Analysis

Section 47(4) of the *Act* stipulates that a tenant may dispute a One Month Notice to End Tenancy for Cause by filing an Application for Dispute Resolution within 10 days after the date the tenant receives the Notice.

On the basis of the undisputed testimony I find that the One Month Notice to End Tenancy was mailed to the Tenant on November 10, 2017 and that it was received by the Tenant on November 16, 2017. I therefore find that the Tenant had until November 26, 2017 to file his Application for Dispute Resolution. Residential Tenancy Branch records show the Application for Dispute Resolution was filed on November 28, 2017, which was two days late.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy in exceptional circumstances.

On the basis of the Tenant's undisputed testimony that he attended a Service BC office on November 23, 2017 to dispute the Notice to End Tenancy, which was within the legislated time period; that he was unable to complete the Application for Dispute Resolution on November 23, 2017 for reasons that are not entirely clear to me; that he had to physically attend the Service BC office because he does not have access to a computer; and that it was filed on November 28, 2017, I find it reasonable to extend the time limit for filing this Application for Dispute Resolution. I find that the Tenant made a reasonable attempt to file his Application for Dispute Resolution on time and that his attempts were hindered by his inability to access a computer.

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy by giving notice if the tenant is repeatedly late paying rent. On the basis of the undisputed evidence I find that the Tenant received the One Month Notice to End Tenancy for Cause that is the subject of these proceedings.

Residential Tenancy Branch Policy Guideline #38, with which I concur, reads, in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the

circumstances, the tenant cannot be said to be “repeatedly” late.

On the basis of the undisputed evidence that the Tenant was late paying his rent on nine occasions in 2017, I find that the Landlord has the right to end this tenancy pursuant to section 47(1)(b) of the *Act*. I therefore dismiss the Tenant’s application to set aside the One Month Notice to End Tenancy for Cause that is the subject of these proceedings.

Section 55(1) of the *Act* stipulates that If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and I, during the dispute resolution proceeding, dismiss the tenant's application or uphold the landlord's notice.

As I have dismissed the Tenant’s application to dispute the One Month Notice to End Tenancy and the Notice complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

The Tenant has failed to establish the merit of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing this Application.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2018. This Order may be served on the Tenant, filed with 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: February 14, 2018

Residential Tenancy Branch