Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OCEANMIST APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL CNC FFT MT OLC

Introduction

This hearing dealt with applications from both the corporate landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The corporate landlord applied for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants named the personal landlord GB in their application and applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlords' 1 Month Notice pursuant to section 47;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The personal landlord GB (the "landlord") confirmed that he was an agent for the corporate landlord.

As both parties were present I confirmed service of documents. The tenant confirmed that she was served with the 1 Month Notice dated January 3, 2018 issued by the corporate landlord, the landlord's application for dispute resolution dated January 19, 2018 and the landlord's evidence. I find that the tenant was served with the 1 Month

Notice, application and evidence in accordance with sections 88 and 89 of the *Act*. The landlord confirmed receipt of the tenant's application for dispute resolution dated February 15, 2018 which names the personal landlord. I find that the landlord was served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to more time to file the application to dispute the landlord's 1 Month Notice? Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?
Is either party entitled to recover the filing fee of their application from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' respective claims and my findings around each are set out below.

This tenancy began in June, 2015. There is a written tenancy agreement which was submitted into written evidence. The landlord holds a security deposit of $450.00.

There have been several other applications made in regards to this tenancy by the tenant under the file numbers listed on the first page of this decision. In the most recent prior hearing the tenant sought to cancel the 1 Month Notice of January 3, 2018. The arbitrator at that hearing wrote:

> The Notice the tenant challenges makes clear that it is from OA [the corporate landlord] not TKOA [the landlord named by the tenant] and the Notice gives a local address for service of documents. It was my determination at hearing that the tenant had named the wrong respondent in her challenge to the Notice and had not sent her challenge to the proper address.. Verbally, her application to cancel the one month Notice was dismissed with leave to re-apply. She was instructed to re-apply immediately and also to request an extension of time to do so in her application. I made no determination about whether time should be extended or the Notice cancelled.

The tenant filed her present application for dispute resolution, disputing the 1 Month Notice on February 15, 2018, the day after the previous hearing. In the present application the tenant has named the personal landlord GB as the respondent. GB testified that he is the agent for the corporate landlord OA.

The tenant seeks an order that the landlord comply with orders issued by a previous arbitrator on May 24, 2017. This was also the subject of the previous decision dated February 23, 2018. In the February 23, 2018 decision the previous arbitrator made findings regarding whether the landlord had complied with the earlier orders.

Analysis

Section 66 of the *Act* allows a time limit established in the Act to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that "exceptional implies that the reason for failing to do something at the time required is very strong and compelling." Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 47(4) of the Act provides that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present application the parties confirmed that the landlord's 1 Month Notice was served on the tenant by posting on the rental unit door on January 3, 2018. The tenant initially challenged that 1 Month Notice by amending their application for the earlier hearing which named a respondent the tenant believed was the owner of the rental property. That portion of the application was dismissed by the earlier arbitrator with leave to reapply as it was found that the tenant had not named the correct respondent nor had she served the respondent at the correct address.

The tenant filed her present application after being verbally informed that her earlier application was dismissed with leave to reapply at the previous hearing. The tenant filed her application on February 15, 2018. In the present application the tenant has again named the onsite manager GB as the respondent.

I find that the tenant has filed the application for dispute resolution on February 15, 2018, outside of the 10 days provided by the *Act*. I do not find that the reasons provided by the tenant as to how the application was filed after the time limit to be evidence of exceptional circumstances.

In all of the previous proceedings the tenant incorrectly named the onsite manager, the individual presumed to be the property owner or both in her applications instead of the corporate landlord OA. Despite the tenant's error being identified and corrected by the presiding arbitrator at each of the previous hearings, the tenant continued to name the incorrect party as the respondent in her applications.

In the previous hearing, the tenant did not name the corporate landlord identified on the 1 Month Notice and the application to cancel the Notice was dismissed by the previous arbitrator. I do not find the tenant's failure to name the correct respondent to be a circumstance that is exceptional or reasonable. The 1 Month Notice clearly provides the name of the landlord issuing the notice as well as the address for service. I find that the tenant's failure to correctly identify the landlord and serve him within the timeframe provided by the Act when the information is clearly available, and the tenant has been instructed in the past, to be the tenant's responsibility.

For these reasons I find that there are no exceptional circumstances to allow an extension of the time limit established by the *Act*. I find that the tenant's failure to file their application in time was caused by the tenant's willful refusal to correctly identify and serve the landlord despite having all necessary information and having been advised in the past.

I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, February 28, 2018.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, 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 1 Month Notice has passed, I issue an Order of Possession effective 2 Days after service.

As I have found that this tenancy is ending I find it unnecessary to make a determination on the tenant's application for an order that the landlord comply with the previous order of May 24, 2017.

As the landlord's application was successful the landlord may recover the $100.00 filing fee for this application by deducting the amount from the security deposit for this tenancy.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced from $450.00 to $350.00.

The tenant's application is dismissed without leave to reapply.

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: March 20, 2018

Residential Tenancy Branch