



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF
 OPC, OPN, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an Order of Possession based on a mutual agreement to end the tenancy, a Monetary Order and retention of the security deposit for unpaid rent and recovery of the filing fee.

This hearing also dealt with a cross-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”), an order for the Landlord to comply with the Act, regulation or tenancy agreement, and an order for the Landlord to provide services or facilities agreed upon but not provided.

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 and the Landlord, both 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 was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the address provided in their Application. At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to them at the dispute address.

Preliminary Matters

Preliminary Matter #1

Both parties filed Applications seeking multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice and the Landlord applied for an Order of Possession in relation to a One Month Notice and a mutual agreement to end the tenancy, I find that the priority claims relate to whether the tenancy will continue or end. I find that the Tenants claims for an order for the Landlord to comply with the *Act*, regulation or tenancy agreement, and an order for the Landlord to provide services or facilities agreed upon but not provided are not sufficiently related to the continuation of the tenancy, and as a result, I exercise my discretion to dismiss these claims with leave to reapply.

Preliminary Matter #2

An Amendment to an Application for Dispute Resolution (the "Amendment") was filed by the Landlord on March 22, 2018, increasing the monetary claim to \$9,600.00 and including a claim for damage. The Tenant testified that she was only ever served with a copy of the Landlord's original Application, the Notice of Hearing, the 10 Day Notice and the One Month Notice and that she never received the Amendment or any documentary evidence from the Landlord. The Landlord stated that this is inaccurate and testified that the Tenant was personally served with her documentary evidence on March 9, 2018, and March 13, 2018. However, the Landlord had difficulty providing the information noted above about the service of these documents in the hearing and did not provide any evidence to corroborate her testimony.

Rules 3.5 and 3.16 of the Rules of Procedure state that the Applicant and Respondent must be prepared in the hearing to demonstrate to the satisfaction of the arbitrator that

the other party was served all evidence as required by the Act and the Rules of Procedure. Based on the above, the Landlord has not satisfied me on a balance of probabilities that the Tenant was served with the Amendment or the documentary evidence before me from the Landlord, other than the Landlord's original Application, the Notice of Hearing, the 10 Day Notice and the One Month Notice.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Tenant was not served with the Amendment or all of the Landlord's documentary evidence in relation to the monetary claim for rent, I find that she did not have a fair opportunity to know the case against her or respond to these claims in her defense. As a result, the Landlord's Amendment seeking to increase the monetary claim to \$9,600.00 and the Application for a Monetary Order and retention of the security deposit for unpaid rent are dismissed with leave to reapply.

Issue(s) to be Decided

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

Is the Landlord entitled to an Order of Possession based on section 55 of the *Act*?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The One Month Notice in the documentary evidence before me, dated January 7, 2018, has an effective vacancy date of February 1, 2018, and indicates that the reason for ending the tenancy is because the tenant is repeatedly late paying rent, the tenant has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable amount of time after being given written notice to do so, and because the tenant knowingly gave false information to a prospective tenant or purchaser.

The Landlord testified that the One Month Notice was personally served on the Tenant on January 7, 2018, and the Tenant confirmed that she personally received the One Month Notice on that date. The Tenant also testified that she did not dispute the One Month Notice.

Analysis

Section 47 of the *Act* outlines the grounds on which to issue a notice to end tenancy for cause and section 47(4) of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 47(5) of the *Act* also states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Based on the oral testimony of the Tenant and in accordance with section 88 of the *Act*, I find that the Tenant was served with the One Month Notice on January 7, 2018, the date she acknowledged receipt in the hearing.

Section 47(2) of the *Act* states that a notice under this section must end the tenancy on a date that is not earlier than one month after the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. As the One Month Notice was not received by the Tenant until January 7, 2018, I find that the effective vacancy date listed on the One Month Notice, February 1, 2018, is incorrect. However, section 53 of the *Act* states that if a landlord or tenant gives notice to end a tenancy on a date that does not comply with the *Act*, the notice is deemed to be changed to the earliest date that complies with the notice period. Based on the above, I find that the incorrect effective vacancy date of February 1, 2018, is automatically corrected under section 53 of the *Act* to February 28, 2018.

Section 55(2) of the *Act* states that a landlord may request an order of possession of a rental unit if notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Based on the Tenant's testimony in the hearing, I also find that the Tenant did not dispute the 10 Day Notice within the five (5) day period provided for under the *Act*. Based on the foregoing, 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 10 Day Notice, February 28, 2018, and the Landlord is therefore entitled to an Order of Possession. In any event, both parties agreed that there was also a signed mutual agreement to end the tenancy on February 28, 2018.

Section 55(3) of the Act states that the director may grant an Order of Possession before or after the date when the tenant is required to vacate a rental unit and that the order takes effect on that date. As the effective date of the One Month notice has passed, the Order of Possession will be effective two days after service on the Tenant.

Section 72 of the Act states that the director may order payment or repayment of a fee under section 59 (2)(c) *[starting proceedings]* by one party to a dispute resolution proceeding to another party. It also states that in the case of payment from a tenant to a landlord, they may order the amount be deducted from any security deposit or pet damage deposit due to the tenant. Pursuant to section 72 of the Act, I also find that the Landlord is entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee. The remainder of the Tenant's security deposit is to be dealt with in accordance with the Act at the end of the tenancy.

As I have already found above that the tenancy is ended as a result of the One Month Notice, I have not made any findings of fact or law in relation to the 10 Day Notice.

Conclusion

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: April 11, 2018

Residential Tenancy Branch