



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, CNL, LRE, MNND

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and two Amendments to an Application for Dispute Resolution (the “Amendments”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of more than one 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), an order restricting or setting conditions on the Landlord’s right to enter the rental unit, and a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement.

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 agent for the Tenant (the “Tenant’s Agent”), the new owner of the rental unit (the “Purchaser”), who is also the agent for the former Landlord, the agent for the Purchaser and legal counsel for the Purchaser (referred to collectively as the Agents for the Purchaser). All parties provided affirmed testimony. The parties were given 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 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 parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I clarified that the rental unit was sold by the former Landlord, D.M., to the current owner, T.L., in April, 2018. Section 1 of the *Act* includes the owner of the rental unit and a former landlord, where the context requires this, under the definition of a landlord. As a result, I find that both D.M. and T.L. meet the definition of a landlord under the *Act*. However, for the sake of clarity, I will refer to D.M. as the “former Landlord” and T.L. as the “Purchaser” throughout this decision. I also clarified the spelling of the names of the parties and amended the spelling on the Application accordingly.

Although the Tenant listed only the former Landlord as a Respondent in his Application, he filed an Amendment seeking cancellation of several notices to end tenancy issued by the Purchaser and there is a letter in the documentary evidence before me authorizing the Purchaser to act on behalf of the former Landlord in the hearing. Further to this, the Application relates to possession of a rental unit owned by the Purchaser. Pursuant to rule 7.13 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I therefore find that the Purchaser is a party to this dispute and have listed the Purchaser as a Respondent in this matter.

Preliminary Matter #2

On February 14, 2018, the Tenant filed an Application seeking cancellation of a 10 Day Notice, stating that no rent amount had been established and no notice to end tenancy had been served. The Tenant also sought cancellation of a One Month Notice dated February 1, 2018, and an order restricting or setting conditions on the Landlord’s right to enter the rental unit.

On February 22, 2018, the Tenant filed an Amendment seeking to dispute a 10 Day Notice dated February 19, 2018, and adding details for his Application regarding an order suspending or setting conditions on the Landlord’s right to enter the rental unit. The Tenant testified that the Amendment was sent to the former Landlord by registered mail on February 22, 2018, and the Purchaser, who is also the agent for the former Landlord, confirmed that it was received April 10, 2018. As a result, I accepted the Amendment and the Application was amended pursuant to the *Act* and the Rules of Procedure.

On April 19, 2018, the Tenant filed an Amendment seeking to dispute three 10 Day Notice's and a Two Month Notice received from the Purchaser and to add a monetary claim in the amount of \$10,000.00. Rule 4.3 of the Rules of Procedure states that amended applications and supporting evidence must comply with the timeline in rule 4.6 which states that an amendment and any supporting evidence must be received by the respondents not less than 14 days before the hearing. Although the Agents for the Purchaser acknowledged receipt of this Amendment by fax on April 24, 2018, they argued that there was insufficient time to fully consider and respond to the Amendment as this was only two days prior to the hearing. However, the Purchaser agreed to cancel and withdraw all three 10 Day Notice's served on the Tenant on his behalf.

Given that the Purchaser, and their Agents argued that there was insufficient time for them to consider and respond to the Tenant's Amendment regarding the Two Month Notice and the monetary claim, and the fact that the Amendment was not filed with the Residential Tenancy Branch (the "Branch") or served on the Respondents in accordance with the Rules of Procedure, the Tenants Amendment seeking cancellation of a Two Month Notice and a Monetary Order in the amount of \$10,000.00 is dismissed with leave to reapply. This is not an extension of any statutory time period.

Based on the above, the hearing proceeded based only on the Tenant's Application and Amendment seeking cancellation of a 10 Day Notice dated February 19, 2018, and a One Month Notice dated February 1, 2018.

Preliminary Matter #3

Although the Purchaser withdrew each 10 Day Notice served on the Tenant on his behalf, the Agents for the Purchaser stated that they still wished to rely on evidence submitted by the Applicant in relation to these notices in the hearing as it relates to the 10 Day Notice dated February 19, 2018, which is one of the notices to end tenancy accepted for consideration in the hearing. The Tenant and the Tenant's Agent objected to the inclusion of this evidence in the hearing stating that the evidence should not be considered as the 10 Day Notices have been withdrawn.

Although I considered the Tenant's objection to the inclusion of this evidence, ultimately I accepted the evidence for consideration in this matter as the parties agreed it was exchanged and the Purchaser expressly requested the inclusion of it in the hearing. I also do not find it reasonable for the Tenant to serve evidence on the other party in

relation to a hearing for which they are the sole applicant, only to request that it be excluded from consideration when the Respondent indicates their intention to rely upon it for their own defense.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling either the 10 Day Notice or the One Month Notice?

If the Tenant is unsuccessful in cancelling either the 10 Day Notice or the One Month Notice, is the Purchaser entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

Although no written tenancy agreement was before me for consideration from either party, the Tenant testified that the tenancy began on September 22, 2017. The Tenant stated that he is personal friends with the former Landlord, who had proposed that he move into the rental unit in August, 2017, however, the amount of rent proposed was too high. The Tenant stated that he subsequently moved into the rental unit in September based on a verbal agreement that he would provide labour for the renovations the former Landlord intended to complete in lieu of rent and that once the renovations were complete, an ongoing rental amount would be discussed and agreed upon by both parties. The Tenant stated that the Landlord never provided him with materials or a timeline in which to complete the renovations and that no rent amount was ever agreed upon. As a result the Tenant testified that no rent was ever paid or due and that the 10 Day Notice dated February 19, 2018, is therefore invalid.

The 10 Day Notice in the documentary evidence before me, dated February 19, 2018, has an effective vacancy date of February 28, 2018, and states that as of February 1, 2018, the Tenant owed \$8,717.74 in outstanding rent. In his Amendment the Tenant indicated that the 10 Day Notice was served on him on February 20, 2018, and he confirmed that this date is correct in the hearing.

Although the former Landlord was not present in the hearing, the Purchaser testified that when he purchased the property, his understanding was that rent for September had be deferred and that the Tenant's monthly rent amount was \$1,500.00. The Agents for the Purchaser stated that the Tenant's testimony that no rent is or was payable makes no sense given the size or the rental unit, the fact that it has views of the ocean

and its location very close to the downtown core of a major city. In support of their testimony that rent is owed, they pointed to text messages from the former Landlord to the Tenant starting at the end of November, 2017, discussing the outstanding rent amounts and requesting payment. They also pointed to a letter authored by the former Landlord stating that rent is \$1,000.00 per month, excluding utilities, which they stated was used by the Tenant to obtain government assistance for rent.

When asked the Tenant acknowledged that he began receiving government assistance in November 2017, including \$375.00 specifically for rent. The Tenant also acknowledged using the letter authored by the former Landlord to obtain government assistance for rent but denied that he ever agreed to the rent amount listed by the Landlord. When asked why he applied for and obtained assistance for rent starting in November, 2017, when his argument is that no rent is payable, he stated that it was in anticipation of when rent would be due. He also stated that the former Landlord was aware of his financial situation, which is why they reached the agreement for him to do renovations in lieu of rent. The Agents for the Purchaser argued that the Tenant cannot have it both ways by receiving rent money from the government while alleging in this hearing that he is not required to pay rent.

The Tenant stated that he was also personally served with a One Month Notice on February 4, 2018. The One Month Notice in the documentary evidence before me, dated February 2, 2018, has an effective vacancy date of February 28, 2018, and states that the reason for ending the tenancy is because the Tenant has allowed an unreasonable number of occupants in the rental unit and because the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The Purchaser and their Agents stated that this notice was served on the Tenant by the former Landlord because the Tenant has a dog contrary to strata bylaws and is renting all or a portion of the rental on a short-term vacation rental site, which is against both the strata and municipal bylaws. In support of their testimony the Purchaser and their Agents provided documentary evidence in the form of municipal and strata documents.

The Tenant agreed that he has a dog and has rented a portion of the rental unit on a short-term vacation rental site; however, both he and his Agent argued that he had the former Landlord's consent to both have the dog in the rental unit, and to use the rental unit as short-term vacation rental housing. In fact, the Tenant's Agent stated that \$55.00 was actually paid to the former Landlord specifically for the registration of the rental unit

on the short-term vacation rental website and pointed to documentary evidence that the former Landlord is listed as a co-host. Further to this, the Tenant and his Agent argued that it was not illegal for him to rent part of the suite as a short-term vacation rental at the time the tenancy began and that although the municipal bylaws have recently changed, he has until the fall to obtain approval from the city to continue using the suite for short-term vacation rentals as it was in operation prior to the new rules. Based on the above the Tenant and his Agent argued that the One Month Notice is invalid and should be cancelled.

Both parties pointed to strata and municipal bylaws and the documentary evidence before me in support of their positions.

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

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(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 February 20, 2018, the day he acknowledged receiving it in the Amendment and the hearing.

Although the Tenant testified that there was an agreement with the former Landlord when he first moved into the rental unit that he would provide labour for renovations in lieu of rent, he acknowledged that the renovations were never completed due to a lack of scheduling and materials from the Landlord and that the Landlord began asking him for rent in October or November, 2017. Although the Tenant testified that he and the Landlord never agreed on a price for rent and that rent was therefore never owed or paid, the Tenant provided verification that he is receiving government assistance in order to obtain an application fee waiver. This documentation shows that he is receiving \$375.00 per month from the government for the purpose of paying rent. When questioned about these payments, the Tenant admitted that he applied for these benefits in October, 2017, and began receiving them in November, 2017. The Agents for the Purchaser pointed to documentary evidence before me authored by the former Landlord stating that rent is \$1,000.00 per month, not including utilities. They stated that the Tenant used this document to obtain government benefits for rent and while the Tenant acknowledged that the former Landlord provided him with this letter and that it was used to obtain the government benefits, he argued that he never signed the letter or consented to that amount of rent.

Despite the Tenant's testimony to the contrary, I find that by using the letter from the former Landlord to obtain government benefits specifically for the purpose of paying rent, and by receiving these benefits from the government on a monthly basis, the Tenant agreed that rent was payable. As a result, I do not find the Tenant's testimony that no rent amount was agreed upon and that no rent is owed reliable.

The 10 Day Notice dated February 19, 2018, states that as of February 1, 2018, the Tenant owed \$8,717.74 in outstanding rent. Although the Tenant disputed that rent in any amount is owed, as stated above, I have already found his testimony in relation to the amount of rent due unreliable. 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 stated above, I do not find the Tenant's testimony that no rent was ever due reliable and based on the fact that the Tenant has been receiving \$375.00 per month from the government for the purpose of paying rent since at least November, 2017, I find that the Tenant owed not less than \$375.00 per month in

rent beginning at least November 1, 2017. The Tenant acknowledged that the only money paid to either the previous Landlord or the Purchaser since the start of the tenancy is \$55.00, which was paid to the former Landlord for the purpose of registering the suite on a short-term vacation rental site, and that no money has been paid to either the former Landlord or the Purchaser since the 10 Day Notice was served on him.

Based on the above, I find that at least some amount of rent was owed on the date the 10 Day Notice was served, and as a result, I find that the 10 Day Notice is valid. As the Tenant acknowledged that no rent was paid since the issuance of the 10 Day Notice, I therefore dismiss the Tenant's Application seeking cancellation of the 10 Day Notice without leave to reapply.

Section 55 of the *Act* requires me to consider if the Landlord is entitled to an Order of Possession because the Tenant's Application seeking cancellation of the 10 Day Notice was dismissed. As a result, 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

- (a) be signed and dated by the landlord or tenant giving the notice,
- (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 Purchaser, who is also the current owner of the rental unit, 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 rent has not been paid for at least several months, the Order of Possession will be effective two days after service of the Order on the Tenant.

Although the Tenant also applied to cancel a One Month Notice and testimony was provided by both parties in the hearing regarding the reasons for which the One Month Notice was issued; as I have already found above that the Tenancy is ended based on the 10 Day Notice, I find that it is unnecessary to make any findings of fact or law in relation to the One Month Notice.

Conclusion

The Tenants Application is dismissed without leave to reapply and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Purchaser effective **two days after service of this Order** on the Tenant. The Purchaser 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: May 7, 2018

Residential Tenancy Branch