# **Dispute Resolution Services**

Residential Tenancy Branch Office of Housing and Construction Standards

# DECISION

Dispute Codes CNR, MT, OLC

## Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 10, 2018, wherein the Tenant sought to cancel a 10 Day Notice for Unpaid Rent issued on July 9, 2018 (the "Notice"), more time to make such an application pursuant to section 66(1) of the *Residential Tenancy Act*, and an Order that the Landlord comply with the *Act*, the *Residential Tenancy Regulation*, or the tenancy agreement.

The hearing was conducted by teleconference at 11:00 a.m. on September 27, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

## Preliminary Matter-Evidence

Although the parties have been involved in numerous applications before the branch related to this tenancy, neither party submitted any evidence in respect of this hearing. The Tenant stated that she did not know she was to submit any evidence.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Rules of Procedure* (the *"Rules"*); Rules 2.5, 3.1, 3.14 and 3.17 of the *Rules* provide as follows:

# 2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

• a detailed calculation of any monetary claim being made;

• a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

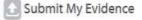
• copies of all other documentary and digital evidence to be relied on at the hearing.

#### 3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Information is also provided on the Residential Tenancy Branch website in which participants are instructed how to apply for Dispute Resolution as well as how to prepare, submit and serve evidence on the other party. The following is a screenshot taken from the site under the heading "How do I prepare my evidence":



You can upload evidence by submitting it directly into your Online Application for Dispute Resolution.

Don't have all of your digital evidence ready but still want to apply? When you submit an application, you will receive a unique Dispute Access Code. This code will allow you to upload evidence after you have submitted your application.

Don't forget, you must also provide copies of your evidence to the other party--either on paper or digitally. • Learn more about requirements for digital evidence

The Landlord's Agent stated that they did not receive the Tenant's application package until less than a week prior to the hearing such that they did not believe they could submit any evidence. The Tenant disputed this claim stating that she served the Landlord earlier.

During the hearing I gave the Landlord permission to upload a copy of the Notice. I also accepted testimony from the Landlord's Agent as to the contents of the Notice; the testimony of the Landlord's Agent was as follows:

- The Notice was signed on July 9, 2018.
- The Notice indicated that the sum of \$570.00 was outstanding as of June 30, 2018.
- The effective date of the Notice was July 23, 2018.
- The Notice was served by posting to the rental unit door on July 9, 2018.

The Tenant claimed she did not have a copy of the Notice in front of her during the hearing; however she did not dispute the Landlord's Agent's testimony with respect the contents of the Notice.

I confirm that on the same day as the hearing the Landlord uploaded a copy of the Notice, as directed and which confirmed the information provided by the Landlord's Agent during the hearing. No other issues with respect to service or delivery of documents or evidence were raised.

#### Preliminary Matter—Tenant's Conduct During Hearing

Throughout the hearing, and particularly near its conclusion, the Tenant was disruptive, frequently interrupting and speaking over others, raising her voice, and repeatedly asking questions which had already been answered. The Tenant did so even when I was addressing simple administrative matters such as confirming the parties email

addresses for delivery of my reasons. While I attempted to explain various matters during the hearing, the Tenant did not stop speaking and interrupting enough to facilitate the delivery of this information. It appeared as though the Tenant was attempting to frustrate the Arbitration, perhaps in hopes of delaying the end of the tenancy.

I advised the Tenant that her behavior was inappropriate and warned her numerous times that if she did not discontinue this behavior, she would be muted.

While I received testimony from the parties on matters related to the application, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- 1. Should the Tenant be granted more time to make her application to dispute the Notice?
- 2. Should the Notice be cancelled?
- 3. Should the Landlord be ordered to comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement?

#### Background and Evidence

The Landlord's Agent testified that monthly rent is payable in the amount of \$750.00. He further testified that the Tenant's rent is paid for by two different organizations; one did not pay their share of \$570.00 for the aforementioned months and the other sent cheques in the amount of \$180.00 per month which have not been cashed by the Landlord. He stated that the Tenant failed to pay the full amount of rent for June, July, August and September 2018.

As noted in the Introduction of this Decision, the Landlord's Agent testified that the Notice was posted to the rental unit door on July 9, 2018. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later such that the Tenant is deemed served on July 12, 2018.

The Notice informed the Tenant she had five days in which to make an application for Dispute Resolution, or pay the outstanding rent. The Notice also informs the Tenant that she may be evicted if she does not respond to the Notice within five days.

The Tenant testified that the Notice was not posted to her door on July 9, 2018. Rather, she testified she saw the Notice "in the third week of July".

A review of the calendar for 2018 confirms that the third week of July includes July 15-21, 2018.

The Tenant applied for Dispute Resolution on August 10, 2018.

The Tenant submitted that she should be granted more time to make her application for dispute resolution as the Landlord has been "trying to illegally evict [her] for two years". While she did not reference the file numbers for prior hearings, a review of the Branch records confirms that this tenancy has been the subject of several prior applications. The file numbers for those applications are recorded on the unpublished cover page of this my Decision.

The Tenant also testified that she paid rent. Aside from her testimony, no evidence of these payments was provided in evidence.

#### <u>Analysis</u>

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

Section 66 of the *Act* allows me to extend a time limit established by the *Act* in exceptional circumstances and reads as follows:

#### Director's orders: changing time limits

**66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].

(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:

(a) the extension is agreed to by the landlord;

(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director **must not** extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

[Emphasis added in **bold italics**]

Even in the event the Tenant's testimony is accepted, she failed to apply for Dispute Resolution until August 10, 2018; three weeks after she claims to have received the Notice "in the third week of July".

More importantly, the Tenant applied for Dispute Resolution on August 10, 2018 which is "beyond the effective date of the notice" of July 23, 2018.

As explained during the hearing the use of "must not" in section 66(3) precludes me from considering an application for more time pursuant to section 66 in such circumstances. Consequently, I am not able to extend the time limit for the Tenant to apply for dispute resolution.

#### The Tenant's Application for more time pursuant to section 66 is dismissed.

Section 46 of the Act reads as follows:

#### 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.
(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Tenant failed to apply for dispute resolution within the strict time limit imposed by section 46(4) and she is therefore conclusively presumed to accept the end of the tenancy and must, pursuant to section 46(5) vacate the rental unit.

Consequently, the Tenant's application to dispute the Notice is also dismissed.

I have reviewed the Notice and find that it complies with section 52 of the *Act* in terms of form and content.

Therefore, the Landlord is granted an Order of Possession pursuant to section 55 of the *Act*. This Order shall be effective two (2) days after service on the Tenant and may be filed and enforced in the B.C. Supreme Court.

The Tenant's application for an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* and the residential tenancy agreement is no longer relevant as the tenancy has ended.

Although the Tenant applied to dispute the Notice, she stated at the end of the hearing that she had another rental unit to move to. During the hearing the Tenant repeatedly stated that she would not move from the rental unit until October 7, 2018 (the date she claimed to have secured alternate accommodation). The Tenant is reminded that any costs incurred by the Landlord to enforce the Order of Possession in the B.C. Supreme

Page: 8

Court, including the cost to hire a bailiff to remove the Tenant, may be recoverable from the Tenant personally.

#### **Conclusion**

The Tenant's application for more time pursuant to section 66 of the Act is dismissed.

The Tenant's application to cancel the Notice is dismissed.

The Tenant's application for an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* and the residential tenancy agreement is dismissed.

The Landlord is granted an Order of Possession.

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: September 27, 2018

Residential Tenancy Branch