



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 774 WINNIPEG STREET LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

The tenant filed an application for dispute resolution on August 1, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the “Act”), seeking an order to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) and a monetary order for recovery of the filing fee. This is my decision in respect of the landlord’s application.

The tenant, his legal advocate (the “advocate”), and the landlord attended the hearing before me on September 21, 2018, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution 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’s notice to end tenancy complies with the Act.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If the tenant is not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession?
3. Is the tenant entitled to a monetary order for recovery of the filing fee?

Preliminary Issue: Late Submission of Evidence by the Landlord

The landlord submitted a package of documentary evidence on September 17, 2018, three days before the scheduled hearing. The landlord explained that the reason for the late submission was that the Service BC office's hours were limited, and that he was only able to submit the evidence so close to the hearing because of those limited hours. The landlord confirmed that he received the tenant's Notice of Dispute Resolution Proceeding package on or about August 2, 2018.

(During his testimony during the hearing, he also explained that it was his understanding that he was not to have any contact with the tenant based on instructions given to him by the BC Prosecution Office and the probation office, and that this was another reason why he submitted the office when he did.)

The tenant's advocate opposed the late admission of documentary evidence on the basis that such submissions were not in compliance with the Rules of Procedure.

Rule 3.14 of the Rules of Procedure states as follows:

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule 3.17 of the Rules of Procedure states as follows:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

Having heard from both parties, and having reviewed the documents that were submitted late, I am not persuaded that the landlord's documentary evidence was not available at a point prior to 14 days before the hearing. Further, I am not persuaded that the Service BC's hours were "limited" such that he was unable to submit his evidence earlier than 14 days before the hearing, and note that the Service BC office in the municipality where the landlord carries on business has office hours of 8:30 a.m. to 4:30 p.m., Monday to Friday.

Given the above, I advised the parties that the landlord's documentary evidence would not be accepted or considered in this application.

Background and Evidence

The landlord testified that the situation that lead to his issuing the Notice resulted from tenant accused him of sabotaging, or damaging, his truck, and that he "was trying to kill his cat." These accusations occurred on or around August 1, 2018, but possibly earlier. The landlord further testified that the tenant engaged in a loud rant and was obtrusive.

In response, the advocate stated that without any additional evidence in front of him, he was unable to make submissions in regard to the landlord's testimony or submissions. The tenant submitted into evidence a copy of the Notice. The Notice was dated, and served on or about July 30, 2018, with an effective end of tenancy of August 30, 2018.

Neither party provided any additional oral evidence or follow-up submissions at the end of the hearing.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice details the cause of the Notice being issued as "TENANT DID ASSAULT MYSELF (MANAGER) THREW HOT COFFEE ON MY FACE & LEFT FACE." However, the landlord did not provide any testimony regarding this event, but rather, spoke about the tenant making allegations against the landlord about his truck and his cat. The landlord did not provide any additional oral evidence concerning the grounds on which the Notice was issued.

Taking into consideration all the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was issued.

I grant the tenant's application for a monetary order for recovery of the filing fee. I hereby order that the tenant may make a one-time deduction from his rent for October 2018 in the amount of \$100.00, in full satisfaction of this claim.

Conclusion

The landlord's Notice, dated July 30, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 21, 2018

Residential Tenancy Branch