



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OLC, AS, LAT, LRE, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”);
- 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;
- Authorization to assign or sublet the rental unit as the Landlord’s consent has been unreasonably withheld;
- Authorization to change the locks;
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit; and
- A monetary order for money owed or 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, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Application and the Notice of Hearing were sent to the Landlord by registered mail on September 13, 2018, at the address for service for the Landlord listed on the tenancy agreement. The Tenant provided me with the registered mail tracking number and the Canada Post website confirms that the registered mail was sent as described above and signed for on September 17, 2018. As a result, I find that the Landlord was served with the Application and the Notice of Hearing in accordance with the *Act* and the Rules of Procedure on September 17, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing and mailed to the mailing address listed in the Application.

Preliminary Matters

Preliminary Matter #1

In their Application the Tenant sought 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 One Month Notice and a 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end. I find that the majority of the other claims the Tenant are not sufficiently related to the notices to end tenancy or continuation of the tenancy and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- Authorization to assign or sublet the rental unit as the Landlord's consent has been unreasonably withheld;
- Authorization to change the locks;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- A monetary order for money owed or damage or loss under the *Act*, regulation or tenancy agreement.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice, cancellation of a 10 Day Notice, and an order for the Landlord to comply with the *Act*, regulation or tenancy agreement.

Preliminary Matter #2

At the outset of the hearing I identified that I did not have any documentary evidence before me from the Tenant other than an audio recording and a copy of the Tenant's Application.

The Tenant testified that on October 5, 2018, he placed his documentary evidence package through the mail slot of a closed Service BC Office. He stated that he called the Residential Tenancy Branch (the "Branch") on October 12th, 15th, 16th, and 17th of 2018 to see if the package had been received and was advised on each occasion that it had not. The Tenant stated that he called again on October 19, 2018, to obtain the Branch fax number so that the documents could be faxed to the Branch. Records at the Branch confirm these telephone conversations. The Tenant testified that he subsequently faxed the documentary evidence to the Branch; however, the documentary evidence is not before me for consideration and at the time of this decision, there was no record of its receipt at the Branch.

The Tenant did not provide a fax confirmation for my consideration and stated that he did not have a witness present with him when he placed the evidence package through the Service BC Office mail slot.

Rule 3.14 of the Rules of Procedure states that all documents to be relied on in the hearing by the Applicant must be received by the Branch or through a Service BC Office not less than 14 days before the hearing. Although the Tenant testified that he submitted his documentary evidence to a Service BC Office within the time period required by the Rules of Procedure, there is no record that this evidence was ever received by a Service BC Office or the Branch and the Tenant testified that he did not have a witness present with him. As a result, I find that the Tenant has not satisfied me, on a balance of probabilities, that his documentary evidence was submitted to a Service BC Office as described.

Although rule 3.18 of the Rules of Procedure states that an arbitrator may adjourn a dispute resolution hearing to receive evidence if a party can show that the evidence was submitted to the Branch or a Service BC Office within the required time limits, but was

not received by the arbitrator before the dispute resolution hearing; as stated above, the Tenant has not satisfied me, on a balance of probabilities, that his documentary evidence was in fact submitted within the required time limits. As a result, I have not adjourned this matter to allow for the receipt and acceptance of the Tenant's documentary evidence.

As a result of the above, the hearing therefore proceeded only on the Application, the audio recording in the documentary evidence before me and the Tenant's affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice and the 10 Day Notice?

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

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The Tenant stated that he has a written tenancy agreement with the Landlord, who verbally threatened to evict him. The Tenant stated that the Landlord also removed his mailbox and has been entering his rental unit unlawfully without permission or proper written notice.

The Tenant stated that he does not have copies of a One Month Notice or a 10 Day Notice as he has not actually received a notice to end tenancy from the Landlord. The Tenant testified that he feared the Landlord would allege service of a notice to end tenancy without actually serving one on him and as a result, he stated that he pre-emptively filed this Application so that the Landlord could not receive an order of possession through a hearing or through the direct request process without actually having served him a notice to end tenancy.

Analysis

Section 44 of the *Act* states that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

Although the Tenant sought to dispute a One Month Notice and a 10 Day Notice, he testified in the hearing that no notice to end tenancy has been received. Further to this, there is no evidence before me that any of the other circumstances prescribed in section 44 of the *Act* exist.

As a result, I dismiss the Tenant's Application seeking cancellation of a One Month Notice and a 10 Day Notice with leave to reapply as there is no evidence that a notice to end tenancy has been served or received by the Tenant under section 46 or 47 of the *Act* as of the date of this hearing. As a result, I order that the tenancy continue in full force and effect, subject to all requirements of the *Act*, the regulation and the tenancy agreement, until it is ended by either party in accordance with the *Act*.

Given the Tenant's undisputed testimony that the Landlord or the Landlord's agents have entered the rental unit without consent or proper written notice, I also order that

the Landlord comply with section 29 of the *Act* regarding entry to the rental unit. The Landlord should be aware that failure to abide by this order and the above noted provision of the *Act* may result, among other things, in further orders from the Branch restricting or setting conditions the Landlord's right to enter the rental unit or authorization for the Tenant to change the locks of the rental unit.

Conclusion

I dismiss the Tenant's Application seeking cancellation of a One Month Notice and a 10 Day Notice with leave to reapply as there is no evidence that either have been served or received by the Tenant as of the date of the hearing. As a result, I order that the tenancy continue in full force and effect, subject to all requirements of the *Act*, the regulation and the tenancy agreement, until it is ended by either party in accordance with the *Act*.

I also order that the Landlord comply with section 29 of the *Act* regarding entry to the rental unit.

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: October 22, 2018

Residential Tenancy Branch