



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of a One Month Notice to End Tenancy for Cause. The Tenant also requests an order requiring the Landlord to comply with the Act and/or tenancy agreement.

The Landlord and Tenant appeared for the scheduled hearing; the Tenant also had an advocate present to assist. The Tenant stated that she was given the Landlord’s evidence package too late; she states that it was attached to her door September 25, 2018. The Residential Tenancy Branch’s Rules of Procedure 3.15 requires that any documentary evidence that is intended to be relied upon at the hearing must be received by the Applicant and the Residential Tenancy Branch directly or through a Service BC Office not less than 7 days before the hearing. I find that the evidence was received at least 7 days prior to the scheduled hearing and therefore I am allowing the Landlord’s evidence package to be considered.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the Residential Tenancy Act (“Act”)?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulations and/or the tenancy agreement, pursuant to section 62 of the Act?

Background and Evidence

This was a verbal tenancy agreement that began March of 2015 as a month-to-month tenancy. The rent is currently \$1,100.00 which the Tenant testified is payable on the 1st of each month; a security deposit of \$525.00 was paid to the Landlord. The Landlord did not dispute this.

The Landlord stated that the Tenant was routinely late with rent payments. Her records show multiple payments made and the Landlord explained that the Tenant was paying in advance at times, and then making up the balance past the due date. For example, the records indicate that February, July and August 2018 rent payments were made in two installments; the Landlord argues that she is no longer willing to accept this pattern of payment, although she indicates that it is a long-standing pattern. The Landlord is also concerned that the hydro bills are not paid on time, and that the city will assess late charges against her tax assessment.

The Tenant explained that she was diagnosed with a terminal illness and let go from her job as she was reducing her hours of work; she has since arranged for disability payments and contract work, and this is the explanation for some of the payment installments. She is confident that she can pay rent each month, and offered to pay increased rent of \$300.00, which the Landlord is not prepared to consider.

The Tenant also states that her rent was paid in installments by way of agreement between the parties and that she is certain her final e-transfers were made by the 1st of each month and that it is not her issue or concern when the Landlord finally accepts the deposit into her own account, which is reflected in the bank statements filed by the Landlord. The statements show regular installments, but little to confirm what month the payments applied to; the Landlord's evidence stating "pages 2 through 20 are bank statements showing payments either made in full or in part". There was no evidence submitted as to the dates the Tenant sent the e-transfers over to the Landlord to await acceptance.

The Tenant states that the Landlord attempted to evict her this spring for late hydro payments, but that payment is due to a third party and is all caught up; she just received another invoice today for hydro to September 22, 2018.

The Landlord served a One Month Notice to End Tenancy on August 2, 2018; she states that she was leaving town and was in a hurry and forgot to date the document next to her signature before opening the Tenant's Canada Post mailbox with an extra set of keys and leaving the Notice inside. The effective date of the notice is September 15, 2018 and the reason given was repeatedly late rent and hydro payments.

The Tenant received this notice August 5, 2018 and argues that it was not served in compliance with the Act. She states that the Landlord had no right to go into her mailbox to leave documents for service. She found the documents on Sunday, August 5 and filed this dispute application on August 16, 2018. It is her position that the notice was not served in accordance with the Act, that it is not valid because it is undated and that the Landlord accepted the rent in installments and therefore cannot use this as grounds to evict her now. She asks that the Notice be cancelled.

The Tenant also stated that she had a ceiling fan in her bedroom and that the Landlord removed it without warning and replaced it with a light. She states that the rental unit was very hot during the summer, which impacted her health. She would like it replaced. The Landlord states that the parties spoke about the fan and the Tenant's concerns that it was spreading dust throughout the unit and that the only reason she removed it was to accommodate the Tenant's request to do so.

Analysis

Under section 47 of the Act, a Landlord may end a tenancy for the following:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(b) the tenant is repeatedly late paying rent;

The Tenant argued that the Notice was not served in accordance with the Act, although section 88 allows for service by leaving it in a mailbox or through a mail slot at a tenant's residence. I find that the Landlord left it in the mailbox which is effective service, and I further find that the Tenant acknowledged the receipt of the notice three days later, on August 5, 2018.

From that point, she had 10 days to dispute the Notice as per section 47(4):

47.(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

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

(4) 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.

(5) 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

*(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 by that date. [bolding added]

The Tenant received notice on a long weekend and offices were closed Sunday and Monday. She says she filed her dispute within ten days after the offices re-opened.

I find that the Tenant had ten days from the receipt of the notice on August 5th to file a dispute application; this means that her deadline to file was Wednesday, August 15, 2018, which is a weekday. The records show, and the Tenant confirmed, that she filed on August 16, 2018. The Tenant's Application did not include a request for additional time for filing and no reasons were provided for the late filing.

Accordingly, the Tenant is *conclusively presumed* to have accepted the Notice to End Tenancy. As such, it is not necessary to consider the merits of the notice; the effective date is automatically adjusted

pursuant to section 53 to the end of the following month, namely September 30th, 2018. The Tenant's Application to cancel the Notice is dismissed.

Under section 55 of the Act, I must consider whether the Landlord is entitled to an Order of Possession in the event that a Tenant's Application to cancel a Notice to End Tenancy is dismissed:

*55. (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. ...

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

I have reviewed the Notice to End Tenancy and find that it complies in form and in content with section 52, which requires that it be in writing and:

(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,

....

(e) when given by a landlord, be in the approved form.

The absence of the date next to the Landlord's signature is not a fatal flaw; the Tenant testified that she received the notice on August 5, 2018 and the lack of a date only next to the Landlord's signature does not negate the entire Notice. Under Policy Guideline #11 of the Residential Tenancy Branch, an arbitrator may consider whether a reasonable person would have known the facts and whether one party is unfairly prejudiced by amending the notice. The Notice is hereby amended to include a date of August 2, 2018 as noted as the date it was served and as it was confirmed by the Landlord.

As the Notice meets section 52 requirements, I am granting the Order of Possession in favour of the Landlord.

The Tenant has also made a request that the Landlord follow the Act, regulations and/or tenancy agreement pursuant to section 62 of the Act. As to the Tenant's request that the ceiling fan be replaced, I find that the parties agreed to remove the fan and that there is no requirement in the legislation,

regulations or verbal tenancy agreement that a fan be provided to the Tenant. With respect to the Landlord's access to the Tenant's mailbox, the Landlord is to refrain from accessing her mailbox unless she has the Tenant's consent. As the tenancy is terminated, there is no further order to be made with respect to section 62.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 05, 2018

Residential Tenancy Branch