



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL-4M, RP, PSF, LRE, LAT, RR, OLC, FFT

Introduction

This hearing dealt with the tenant's application, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice"), pursuant to section 49;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she placed her notice of application for dispute resolution in the landlord's mailbox on November 30, 2018. The landlord testified that he received the notice of application for dispute resolution on November 30th or November 31st, 2018. I find that while the notice of application for dispute resolution was not served in accordance with section 89 of the *Act*, it was sufficiently served, for the purposes on this *Act*, in accordance with section 71 of the *Act* because the landlord confirmed receipt of it.

The tenant filed an amendment to her application on December 21, 2018 (the “first amendment package”) for an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*.

Both parties agree that the tenant placed the first amendment package in the landlord’s mailbox on December 21, 2018 and that the landlord received it that day. I find that the landlord was served with the first amendment package in accordance with section 88 of the *Act*.

Preliminary Issue- Second Amendment

The tenant filed a second amendment package on January 9, 2019 (the “second amendment package”) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), pursuant to section 46 of the *Act*.

The tenant testified that she placed the second amendment package in the landlord’s mailbox on January 9, 2019, two days before the hearing. The landlord testified that he received the second amendment package on January 10, 2019, one day before the hearing.

Both parties agree that the 10 Day Notice is dated October 26, 2018 and has an effective date of February 28, 2019. The landlord testified that he posted the 10 Day Notice on the tenant’s door on January 7, 2019. The tenant testified that she received the 10 Day Notice on January 8, 2019. I find that service of the 10 Day Notice was effected on the tenant on January 8, 2018 in accordance with section 88 of the *Act*.

Section 46(4) of the *Act* states that 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.

I find that because five days has not elapsed since the tenant received the 10 Day Notice, it is pre-mature to hear this application. I informed both parties at the hearing that if I find that the Four Month Notice is cancelled, that I would adjourn the tenant’s application to cancel the 10 Day Notice to be heard at future date. However, if I find that this tenancy ends in accordance with the Four Month Notice, the application to cancel the 10 Day Notice will be dismissed, not adjourned.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Four Month Notice to End Tenancy and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Four Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice"), pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in September of 2012 and is currently ongoing. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. The subject rental property is a house with an upper and lower suite. The tenant pays rent to the landlord for the entire house, she lives in the lower suite and rents out the upper suite.

The landlord testified that on October 26, 2018 he put the Four Month Notice in the tenant's mailbox. The Four Month Notice was dated October 26, 2018 and has an effective date of February 28, 2019. The tenant testified that she received the Four Month Notice on October 28, 2018. The tenant testified that she filed to dispute the Four Month Notice on November 28, 2018.

The landlord testified that it has always been his intention to renovate the subject rental property and that he intends on converting it back to a single-family dwelling. The landlord testified that he plans on removing some walls on the main floor of the subject rental property to make it open concept and plans on renovating the kitchen. The landlord testified that in order to complete the electrical and plumbing work, the ceiling and walls will have to be cut into which will require vacant possession of the subject rental property.

The landlord testified that he has applied to the city for a building permit but was told by the city that he needs to have the subject rental property tested for asbestos before the building permit will be issued. The landlord testified that he provided the tenant with 24 hour notice of entry to complete the required asbestos testing but that the tenant refused him access to the subject rental property. The landlord testified that he has not yet received the necessary building permits because the tenant has not allowed him access to the subject rental property.

Counsel for the tenant submitted that the landlord previously attempted to evict the tenant by issuing a 10 Day Notice to end tenancy for unpaid rent, a Two Month Notice to End Tenancy for Landlord's Use of Property and a previous Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. Counsel submitted that all three Notices to end tenancy were cancelled in a Decision from the

Residential Tenancy Branch dated September 20, 2018. In that Decision, the arbitrator found that the landlord did not issue the notices to end tenancy in good faith.

Counsel for the tenant submitted that the landlord is only seeking to evict the tenant because she has requested repairs to the subject rental unit which the landlord does not wish to undertake. Text messages from the tenant to the landlord requesting repairs were entered into evidence. Counsel also submitted that the landlord is evicting the tenant so that he can increase the rental rate to earn more money.

Counsel for the tenant submitted that the tenant put stipulations on the landlord's right to enter the subject rental property but did not prevent the landlord from entering the property.

Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the Four Month Notice was effected on the tenant on October 28, 2018, in accordance with section 88 of the *Act*. Upon review of the Four Month Notice, I find that it conforms to the form and content requirements of section 52 of the *Act*.

Section 49(8)(b) and section 49(9) state that if a tenant who has received a Four Month Notice does not make an application for dispute resolution within 30 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the tenant did not dispute the Four Month Notice within 30 days of receiving it. 30 days from October 28, 2018, when the tenant received the Four Month Notice, was November 27, 2018. The tenant failed to dispute the Four Month Notice one day late. I therefore dismiss the tenant's application to cancel the Four Month Notice.

I find that, pursuant to section 49 of the *Act*, the tenant's failure to file to dispute the Four Month Notice within 30 days of receiving the Four Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the premises by February 28, 2019. I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on February 28, 2019. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the subject rental property by 1:00 p.m. on February 28, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenant was not successful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on February 28, 2019**, which should be served 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.

I dismiss the following claims with leave to reapply:

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*.

I dismiss the tenant's application to recover the filing fee from the landlord without leave to reapply.

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: January 11, 2019

Residential Tenancy Branch