Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, ERP, OPC, FFL

Introduction

This hearing was reconvened, further to my decision dated February 6, 2019, giving the Landlord an order of possession and recovery of the filing fee. However, the Tenant contacted the Residential Tenancy Branch ("RTB") to dispute that the decision had not addressed the matters in his cross application. In addition to applying to Cancel the One Month Notice to End the Tenancy ("One Month Notice"), the Tenant said he had also applied for "more time" pursuant to section 66 of the *Act*, and for emergency repairs under section 33 of the *Act*. Based on the Tenant's conversations with an information officer ("IO") at the RTB, an interim decision was made on February 08, 2019, and the reconvened hearing was set for February 15, 2019, at 11:00 a.m. A copy of the interim decision and the Notice of Hearing was sent to each party by the RTB. For the sake of brevity I will not repeat here the matters addressed or the findings of fact made in either the original decision dated February 6, 2019, or the interim decision dated February 08, 2019. As a result, both decisions should be read in conjunction with this decision.

The Tenant, the Landlord, and the Landlord's Agent, ST, attended the reconvened hearing and gave affirmed testimony.

Preliminary Matters

In the reconvened hearing, the Tenant said he did not understand the purpose of the hearing being reconvened; he said he had wanted to apply to have the decision reconsidered and to speak to a manager. He said he had left a voicemail in this regard and that an IO from RTB called him back; the Tenant said the IO told him that he did not have to attend an RTB office to make his application and that she could sign him up and send him a package in this regard. He received an email with the details of the

reconvened hearing and he did not understand what it was about or why it was happening.

I informed the Tenant that it appeared that the IO had misunderstood his concern, thinking that the problem was that I had not addressed the issues for which he had cross-applied for relief under the *Act*. The purpose of the reconvened hearing was to address his applications for "more time" and for "emergency repairs", but the Tenant said he had just wanted the first decision reviewed by an RTB manager. The Tenant said that he was meeting with his lawyer on Monday to assist him in seeking a review consideration.

If the Tenant would like the decision reviewed or reconsidered, section 79 of the Act and Policy Guideline 24 state the grounds on which it can be done:

A. GROUNDS FOR A REVIEW

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) provides for a review of a decision or order if:

1. a party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control;

2. a party has new and relevant evidence that was not available at the time of the original hearing; or

3. a party has evidence that the decision or order was obtained by fraud

Preliminary and Procedural Matters

Following the IO's conversations with the Tenant, I issued an interim decision to reconvene the hearing. As this interim decision stated, the reconvened hearing was not an opportunity for the Parties to present new evidence on the issue dealt with in the first hearing – the validity of the Landlord's One Month Notice for unpaid rent from November 2018 through to February 2019. Instead the purpose of the reconvened hearing was to address the remaining claims by the Tenant for "more time" and for "emergency repairs".

In the reconvened hearing, the Tenant said he had paid the rent owing to the Landlord

at the beginning of January and in February 2019; however, the Landlord's Agent strenuously disputed that point. Further, the Tenant's statement in this regard is inconsistent with what he had said in the first hearing.

In the first hearing, the Landlord provided evidence that the Tenant was repeatedly late with rent and did not pay it at all in January 2019. I found the Tenant to be focused on allegations of vandalism and police reports and would not say more about the Landlord's allegation other than he was sorry if his rent was a little late. He did not deny having failed to pay January 2019 rent in the first hearing, but in the second hearing he said that he paid the Landlord for January in cash. The Tenant said the Landlord did not give him a receipt for the January rent payment, but instead gave him a notice of eviction. This is inconsistent with the Parties' previous agreement that the Landlord had served the One Month Notice on the Tenant on December 14, 2018, not in January 2019.

In the first hearing and in his documentary evidence, the Tenant said that the Landlord had served him with the One Month Notice by banging on his door at one o'clock in the morning. The Tenant also said that the Landlord broke the door and lock on this occasion. However, in the second hearing, the Tenant said that this had happened at three o'clock in the morning.

The Landlord said that this "story" does not make sense, because why would a landlord break a door or lock that is his own property. He said, 'it doesn't make sense".

I redirected the discussion to the matters that were before me in this review, those being the Tenant's request for "more time" and his request for "emergency repairs".

Issue(s) to be Decided

- Does the Tenant have the right to "more time" to file his Application to contest the One Month Notice?

- Does the Tenant get an order for emergency repairs from the Landlord?

Background and Evidence

In the first decision letter, I had found: "The Parties agreed that the Landlord served a

One Month Notice on the Tenant in person on December 14, 2018, with a vacancy date given as January 13, 2019." In the reconvened hearing, the Tenant said he served the Landlord with his Application for Dispute Resolution on January 4, 2019.

When I asked the Tenant about the emergency repairs for which he had applied, he told me that there were rats in the garage in which he stored his vehicle and that they had done damage for which he wanted the Landlord to repair.

Analysis

More Time to Apply

Section 47(4) states that "(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." [emphasis added] I have found that the Tenant was served in person with the One Month Notice on December 14, 2018. As a result, he had until December 24, 2018, to apply to dispute the One Month Notice. The Tenant applied to the RTB for dispute resolution on December 28, 2018.

The Tenant was late in applying to dispute the One Month Notice, but he said he had applied for more time to prepare his application, rather than more time to initiate the application. The Tenant said that he thought he had applied to get more time prepare to dispute the One Month Notice, not to make the application. I advised him that this was not what the section of the *Act* addresses.

Section 66 of the Act states that a time limit established by this Act may only be extended in exceptional circumstances. During the hearings the Tenant provided no evidence or testimony that exceptional circumstances for the extension of the time period to have made his Application seeking cancellation of the One Month Notice existed. As a result, I dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

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 One Month Notice in the documentary evidence before me is signed and dated by

the Landlord, gives the address for the rental unit, states the effective date of the notice, and is in the approved form. As a result, I find that it complies with section 52 of the Act and I therefore find that the Landlord is entitled to an Order of Possession for the rental unit pursuant to section 55 of the Act. In doing so I set aside the previous Order of Possession dated February 06, 2019, and grant a new Order of Possession which will be effective two (2) days after service on the Tenant.

Having made this finding, I will now turn my mind to the matter of emergency repairs.

Emergency Repairs

I read section 33 of the *Act* to the Tenant, explaining that repairs to his vehicle were not considered “emergency repairs” under the *Act*.

EMERGENCY REPAIRS

33 (1) In this section, **"emergency repairs"** means repairs that are

(a) urgent,
(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,
(ii) damaged or blocked water or sewer pipes or plumbing fixtures,
(iii) the primary heating system,
(iv) damaged or defective locks that give access to a rental unit,
(v) the electrical systems, or
(vi) in prescribed circumstances, a rental unit or residential property

As it turned out, the Tenant had misunderstood what constituted an “emergency repair”. As there is no evidence before me for consideration that the Tenant is seeking or requires emergency repairs as defined under section 33 of the Act, I therefore dismiss the Tenant’s Application seeking an order for the Landlord to complete emergency repairs without leave to reapply.

As the Landlord’s application remains successful, I confirm my previous finding in the decision dated February 06, 2019, that pursuant to section 72 of the *Act,* the Landlord is authorized to retain **$100.00** from the Tenant’s $311.00 security deposit in full satisfaction of the Landlord’s recovery of the cost of the filing fee. I find the Tenant’s security deposit is now $211.00 as a result, which the Landlord continues to hold.

Conclusion

The Tenant's Application is dismissed, in its entirety, without leave to reapply.

The Landlord's Application is successful.

As the effective vacancy date of the One Month Notice, January 31, 2019, has passed, I grant the Landlord an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

The Landlord has been authorized to retain $100.00 from the Tenant's $311.00 security deposit in full satisfaction of the Landlord's recovery of the cost of the filing fee. The Tenant's security deposit is now $211.00, as a result.

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 *Residential Tenancy Act*.

Dated: February 21, 2019

Residential Tenancy Branch