



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP FFT LRE MNDCT MNRT MT OLC PSF

Introduction

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

- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- cancellation of the landlords' One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- more time to make an application to cancel the Notice pursuant to section 66;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlords 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 the landlords were served the notice of dispute resolution package via registered mail on January 13, 2019. The tenant could not locate a Canada Post Tracking Number. The landlords confirmed receipt of the notice of dispute resolution package via registered mail but did not specify a date. I find that the landlords

were deemed served with this package on January 18, 2019, five days after the tenant mailed it, in accordance with sections 89 and 90 of the Act.

The landlords testified that the tenant was served with their evidence package via registered mail on February 14, 2019. The landlords provided a FedEx tracking number reproduced on the cover of this page. The tenant confirmed receipt of the evidence package but did not specify a date.

Registered mail is defined in section 1 of that Act as including “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.” I find that sending the package by FedEx does not meet this definition. Nevertheless, as the tenant has confirmed receipt of the documents, I find that pursuant to section 71(2)(b) the landlords’ evidence package is served in accordance with the Act.

Preliminary Issue – More Time

The tenant applied pursuant to section 66 of the Act to extend the time period within which he would be permitted to dispute the Notice.

The parties agree that the Notice was served on the tenant in person on December 16, 2018. It had an effective date of January 31, 2019. The Notice listed the grounds for ending the tenancy as “tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or landlord.” The Notice continues:

The landlord served the tenant notice of entry (served in person) on 11th December 2018 for the purpose of repairing leak/mold in the powder room and preventing future leaks in ensuite bathroom of master bedroom. However, tenant denied the legal access of the landlord’s representative and repair team on 13th December, 2018. Two police officers were present and witnessed tenant’s denial of access.

[names and identifying details not reproduced]

Section 47(4) requires that the tenant dispute the Notice within 10 days of being served. If the tenant fails to do this, per section 47(5), the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date, and must vacate the unit by this date. The tenant did not dispute the Notice within 10 days, and he has not vacated the rental property.

The tenant filed an application for dispute resolution to cancel the Notice on January 14, 2019 (29 days after receiving the Notice).

The tenant argues that the Notice was not properly issued, and that the landlords were in substance, issuing a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion of the Rental Unit to Another Use. As such, the tenant argues that he should be entitled to 30 days to dispute the Notice, as that is the amount of time provided by section 48(8) of the Act within which such a notice may be disputed.

Section 66(1) of the Act states:

Director's orders: changing time limits

66 (1)The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59

Policy Guideline 36 states:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure

- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

I do not find the argument made by the tenant to be persuasive. If the tenant believed that the Notice was not properly issued, and a Four Month Notice was appropriate in the circumstances, he ought to have disputed the Notice within 10 days on that basis. He did not.

I find that the reason for the tenant not disputing the Notice within 10 days of being served with it does not rise to the level of an "exceptional circumstance." Rather, I find that it was the result of not knowing the applicable law or procedure.

Accordingly, I dismiss the tenant's application for more time to dispute the Notice. The tenant is therefore conclusively presumed pursuant to section 47(5) to have accepted that the tenancy ended on January 31, 2019.

The parties agree that the tenant has paid rent for the month of February 2019. Accordingly, I grant the landlords an order of possession effective 1:00pm on February 28, 2019.

As the tenant is to vacate the rental property shortly, there is no need for me to adjudicate the following applications made by the tenant for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;

I dismiss all of these applications, without leave to reapply.

Issues to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit?

Is the tenant entitled to recover his filing fee for this application from the landlord?

Analysis

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the remaining issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute:

1. The landlords will pay the tenant \$300.00 in satisfaction of the tenant claim against the landlord with respect to costs incurred by him for replacing a kitchen faucet.

These particulars comprise the full and final settlement of all aspects of this dispute for the attending parties. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding, which settle all aspects of the monetary dispute between these two parties.

Conclusion

The tenant's application to cancel the Notice is dismissed without leave to reapply.

I grant an order of possession to the landlords effective February 28, 2019 at 1:00pm. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia

I dismiss, without leave to reapply, the tenant's applications for:

- an order to the landlords to make repairs to the rental unit;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement;
- an order to the landlords to provide services or facilities required by law;
- more time to make an application to cancel the Notice;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement;
- an order to suspend or set conditions on the landlords' right to enter the rental unit; and
- authorization to recover his filing fee for this application from the landlord.

To give effect to the settlement reached between the tenant and the landlords and as, I order that the landlords to pay the tenant \$300.00. Should the landlords fail to comply with this order, this order may be filed and enforced as an order of the Small Claims Division of the Provincial Court of British Columbia.

As the tenant was unsuccessful in his application and the parties agreed to settle a portion of the matter, I decline to order that he may recover his filing fee from the landlords.

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: February 25, 2019

Residential Tenancy Branch