



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNC, MNDCT, MNRT, OLC, RP, RR, OPC

Introduction

This hearing dealt with cross-applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

The landlord applied for:

- an Order of Possession pursuant to section 55.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and **were given a full opportunity to be heard**, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision. The landlords were represented by legal counsel and the tenant was

represented by legal counsel and an advocate. The hearing was extended an additional 75 minutes to allow both parties to be fully heard.

This matter was originally heard on November 29, 2018 whereby the landlord was successful in their application and was granted an order of possession. The tenant filed a Review Consideration application and was successful on December 5, 2018 to have the matter re-heard today.

ZM advised that the tenant sought to amend his application and only seeks to cancel the notice and to be granted an order to have the landlord comply with the Act, regulation or tenancy agreement. Based on the information provided by the tenants counsel, the remainder of the tenants' application is dismissed without leave to reapply. Both parties agreed that the first issue that needs to be addressed is whether the landlord served the One Month Notice to End Tenancy for Cause and if so, when?

Issue(s) to be Decided

Should the original decision and order be confirmed, varied or set aside?

Background and Evidence

Both parties agree that this is a long standing tenancy of over 10 years. DC submits that on September 2, 2018 he and his wife attended the subject property to issue a One Month Notice to End Tenancy for Cause. DC submitted that he personally served the tenant at 4:57 p.m. and his wife was witness to this. DC testified that a proof of service document which signed by his wife has been submitted in evidence. DC submits that information from his cell phone and his wife's is corroborating evidence of service.

BS testified that he went to Vancouver Island for a birthday party on September 1, 2018 and didn't return until September 3, 2018. BS testified that he was not served the notice to end tenancy and only became aware of it by way of another hearing when the Arbitrator advised him of such. BS testified that if he had been served he would have fought the notice as he has done so in the past. BS testified that the landlord does not follow the Act and has been trying to evict him. HJ testified that she was with BS for the birthday party and the balance of the weekend and dropped him off at the ferry terminal around noon on September 3, 2018 for him to return to Vancouver.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness HJ, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlord to be a more credible witness than either the tenant or his witness. The landlord provided consistent, logical testimony which was supported with documentary evidence where available. The landlord admitted when he could not recall specific facts and, where appropriate, referred to his notes and documents prepared prior to this hearing to assist his recollection.

HJ was evasive and defensive when she was questioned by KH. HJ would constantly state "what do you mean by that" to basic and direct questions. HJ would consistently answer a question with a question. HJ gave contradictory evidence. She testified that she dropped off the tenant at the ferry terminal, then later changed her testimony and stated that "they hung out for awhile". HJ's testimony was not compelling.

The tenant was argumentative and focused on irrelevant matters. I found that much of the tenant's testimony to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. It is worth noting that the tenant testified "I tend to mix things up" and "I don't remember what I had for breakfast yesterday half the time". Based on the foregoing, where the evidence of the parties clashed I found that the landlord's version to be more credible, consistent and compelling.

ZM submitted that the two questions to be answered is did the landlord serve the tenant the One Month Notice to End Tenancy for Cause, and if so, when? ZM submits that the tenant has fought numerous attempts by the landlord to end this tenancy and that it's reasonable to assume he would have done the same if he was served as alleged. ZM

submits that the landlord simply has not served the tenant and that if not for the tenant making inquiries through the Branch, he would not have been aware of the hearing on November 29, 2018. ZM submits that as the tenant has not been served the notice in accordance with the Act, the notice and previous decision should be set aside and that the tenancy continues. ZM also submits that any further notices issued by the landlord should be sent by registered mail that can be verified by tracking numbers as outlined in the service provisions of section 88, 89 and 90 of the Act.

KH submits that the landlord's wife was present when he personally served the tenant on September 2, 2018 at 4:57 p.m. KH submits that the landlord provided a proof of service document and that he also provided the location service coordinates from his cell phone to corroborate he was at the subject property at the time he served the tenant the notice to end tenancy. KH submits that the tenant or his counsel have not challenged the credibility of AC.

KH submits that the landlords' wife has also submitted corroborating evidence from her cell phone to support the date and time the landlord served the notice to end tenancy. KH submits that the tenant has not provided any documentation to support his position that he was away from September 1-3, 2018. KH submits that the landlord does not dispute that the tenant may have left for Vancouver Island on September 1, 2018 but argues that the tenant returned on September 2, 2018 and not September 3, 2018. KH submits that the tenants witness was also unable to provide any documentation to corroborate the tenants' story that he had been with her on September 3, 2018.

KH submits that during the first hearing, the tenant did not provide any details or information that he was away on September 2, 2018 to attend a birthday party and that this new information was fabricated in an attempt to avoid being evicted. KH submits that the tenant was personally served on September 2, 2018 with a One Month Notice to End Tenancy for Cause and did not dispute the matter for 51 days, well outside of the legislated timelines. KH submits that the since the tenant did not apply within the legislated timelines and did not ask for more time pursuant to section 66 of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. KH submits that the original decision and order should be confirmed.

In terms of credibility, KH further submits that the tenant is less credible than the landlord. KH submits that the tenant submitted a doctored and fraudulent document that was to represent a RTB decision. KH submits that the tenants' credibility is an issue as

he will go to such extreme measures to get a desired outcome. KH cited *Farya v Chorny* (1952), 2DLR, 354 (BCCA), pages 357-358, as a guideline in regards to credibility. I have reviewed and considered that decision and find that it is applicable to the matter before me:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of consistency with the probabilities that surround the currently existing conditions. In short, the real truth of the story of a witness in such case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

RP submits that the tenant never attempted to enforce the monetary order nor did he ever serve the document on the landlord. RP submits that it was only submitted as part of the tenants' documentary evidence package for the November 29, 2018 hearing. The tenant testified that he was attempting to show how easy it was to falsify a document and to copy someone's signature onto another document. The tenant testified that he was attempting to show how the landlord had falsified some documents in the past by copying the tenants' signature onto documents he had never signed or seen.

KH submits that if the tenant was willing to alter a legal document, it's reasonable to conclude that he had the witness provide details that would benefit the tenant and result in a favourable outcome.

In regards to the altered RTB document, I find that the tenants' course of action was at the very least; reckless and ill advised. However, I turn my mind to the actual documentary evidence before me. The landlord has submitted that a One Month Notice to End Tenancy for Cause was dated and served on September 2, 2018 with an effective date of October 31, 2018. The landlord provided a written proof of service document and some locations details from his cell phone along with a photo of the actual notice. The tenant testified that he was on Vancouver Island September 1-3, 2018, yet the tenant was unable to provide a receipt, ferry ticket, restaurant bill, or text messages from the dates in question or pictures from the birthday party. The tenant testified that he often "steals pictures from my friends Facebook", yet did not provide any photos to corroborate his version of the events.

Based on the documentation and testimony of the landlord, the landlord has satisfied me that he did serve the tenant the One Month Notice to End Tenancy for Cause on September 2, 2018 and that the tenant did not file to dispute the notice in accordance with section 49(4) of the Act, and therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit.

Conclusion

Pursuant to section 82(3) of the *Act*, the original decision and order are confirmed.

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 28, 2019

Residential Tenancy Branch