Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;

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 landlord, represented by its property manager, called one witness.

The tenant testified that the landlord was served the notice of dispute resolution package and evidence via registered mail, but could not recall the exact date. The tenant was unable to provide me with a tracking number for the registered mail. The landlord's representative confirmed receipt of the notice of dispute resolution package and evidence, but could not provide me with the date he received it. I find that the landlord was served with the notice of dispute resolution package and evidence in accordance with the Act.

The landlord's representative testified that the tenant was personally served the landlord's evidence on February 28, 2019. The tenant confirmed receipt of this evidence on that date. I find that the tenant was served with this evidence on February 28, 2019, in accordance with section 89 of the Act.

Issue to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree that the parties entered into a written, month to month, tenancy agreement starting June 1, 2018. Monthly rent is $800.00. The tenant paid the landlord a security deposit of $400.00, which the landlord still retains. (I note that this amount is recorded as $800.00 on the tenancy agreement itself, but both parties agree that this is an error).

The parties agree that in December 2018 the tenant moved from a rental unit on the first floor of the rental property to a rental unit on the second floor, and that the tenancy agreement applied to this new rental unit.

On December 27, 2018, the landlord posted the Notice on the tenant's door. The tenant confirmed receipt of the Notice, but did not specify a date. The Notice was dated December 27, 2018, with an effective date on January 31, 2019.

The grounds to end the tenancy cited in the Notice were:

1) the tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
    - put the landlord's property at significant risk;
2) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - damage the landlord's property;
    - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
    - jeopardize a lawful right or interest of another occupant or the landlord;

The tenant testified that he filed an application to dispute the Notice on January 23, 2019. He acknowledged that this was filed late, and testified that as he has poor eyesight and a friend helped him fill out the forms necessary to dispute the Notice. The tenant testified that, prior to filing the application for dispute resolution forms, this friend disappeared, and he could not locate him, which caused a delay. He then testified that his filing of the application was further delayed due to delays in obtain documents from his bank to obtain a fee waiver. The tenant did not provide any documentary evidence in support of these claims.

The landlord testified that the tenant had allowed individuals he permitted onto the rental property to tamper with the rental property's electrical wiring on two occasions:

1) running wires from an outlet in the hallway to an outlet in the tenant's rental unit, through which the tenant took all of his electricity; and
2) running an extension cord from the rental property's laundry room to the tenant's rental unit, and splicing that cord into an outlet in the rental unit from which the tenant took all of his electricity.

The landlord testified that these modifications to the rental property's electrical system pose a danger to the rental property's occupants and to the property itself.

Additionally, the landlord alleges that the tenant allowed guests into the rental property who caused significant damage by breaking doors and windows of the rental property. The landlord testified that the rental property's exterior locks had to be re-keyed because to the tenant distributed copies of keys to the individuals.

The tenant denied the entirety of the landlord's testimony. He testified that he was unaware until it was brought to his attention by the landlord that electrical wires had been run from a hallway outlet to an outlet in his rental unit, and that it was done by an individual who helped him move into the second floor rental unit when the tenant was hospitalized. He denied that an extension cord had been run from the laundry room and spliced into an outlet in his apartment.

The tenant denied that any of his guests caused damage to the rental property. He testified that sometime homeless people come into the rental property and knock on his door, but he denied that they are his guests. The tenant denied that he distributed copies of keys to the rental property to any individuals.

Analysis

Sections 47(4) and (5) of the Act state:

> (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.

Section 66 of the Act allows for an extension of this 10 day time limit only in “exceptional circumstances”. I note that the tenant has not applied for an extension of the limit in his application. Nevertheless, I will address the issue of whether the tenant is entitled to an extension of time.

Policy Guideline 36 discusses what constitutes “exceptional circumstances” in some detail. It 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

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was

hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

On considering the tenant's evidence, I find that his reason for filing this dispute application outside the 10 day limit as proscribed by the Act does not qualify as an "exceptional circumstance." I find that the tenant did not take reasonable steps to comply with the time limit. If the individual who was assisting him in completing the necessary forms could not be found, the tenant reasonably ought to have located another person to assist him with the 10 day period. Additionally, I am not persuaded that the tenant could not have obtained the necessary documents from his bank within 10 days from the date of service of the Notice. The tenant provided no documentary evidence (such as a letter from the bank) in support of his position. I therefore find this "reason" of the tenant to have failed to comply with the time limit to have no force of persuasion.

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective notice. Although the tenant filed an application to dispute the Notice, he failed to do so within 10 days of being served with it, as required by the Act. Therefore, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice (January 31, 2019), and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two day order of possession, pursuant to section 55 of the Act.

Conclusion

I dismiss the tenant's application to cancel the Notice.

Pursuant to section 55 of the Act, I order that the tenant and any other occupant(s) of the rental unit deliver full and peaceable vacant possession and occupation of the said rental unit to the landlord within two days of being served of service of this order by the landlord. This order may be filed and enforced in 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: March 8, 2019

Residential Tenancy Branch