



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR MT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order cancelling a notice to end the tenancy for cause; and for an order permitting more time than prescribed to dispute a notice to end the tenancy.

One of the named tenants attended the hearing and advised that the other named tenant is his minor child. The landlord also attended with a witness. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to question each other and the witness, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the parties agreed that the tenant was not served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the tenant withdrew the application for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the tenant be granted more time than prescribed to dispute a One Month Notice to End Tenancy for Cause?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on June 1, 2014, and presumes that one of the tenants still resides in the rental unit, but is not certain who or how many people.

Rent in the amount of \$1,450.00 was originally payable under the tenancy agreement, which has been increased from time-to-time and is currently \$1,624.00 per month, payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$725.00 which is still held in trust by the landlord.

A copy of the tenancy agreement has been provided by the landlord as evidence for this hearing, which names 2 tenants who were spouses at the time the tenancy agreement was entered into. It also states:

8. Income and Occupancy Verification

(a) The Tenant must provide the Landlord with an Income Verification a minimum of once a year on request from the Landlord and as soon as practicable when there is a change in either:

- (i) the annual income of the Tenant and any Occupants over the age of 18; or
- (ii) the composition of the household.

(b) The Landlord is a public housing body as defined in the *Act*.

(c) The Rental Unit is a subsidized rental unit as defined in the *Act* and the Tenant, or another proposed occupant, was required to demonstrate that he or she met eligibility criteria related to:

- (i) income;
- (ii) number of occupants;
- (iii) health; and/or
- (iv) other similar criteria

before entering into this Agreement for the Rental Unit.

(d) The Landlord may end the tenancy with two months' notice if the Tenant or other Occupant, ceases to qualify for the Rental Unit.

The landlord testified that several requests were made in writing to have the tenants update the information by confirming who is living in the rental unit.

On November 8, 2017 the landlord requested confirmation of occupants to all tenants in the complex. A copy of the one sent to the tenants in this rental unit has been provided as evidence for this hearing. On January 31, 2018 the landlord sent a letter to both tenants named on the tenancy agreement at this rental unit requesting confirmation in writing of the names of all occupants by February 20, 2018, and a copy has been provided for this hearing. On February 19, 2018 the landlord received confirmation in writing that the same occupants still reside in the rental unit since the beginning of the tenancy.

On February 22, 2018 the landlord wrote to the tenants again with respect to a middle name of one of the tenants suggesting that the tenancy agreement be amended.

The landlord received an email on September 27, 2018 from someone on behalf of the tenant wife saying that she had vacated the rental unit effective September 15, 2018.

The landlord sent a letter to the tenant husband on October 2, 2018 with an Amended Tenancy Agreement to sign, but nothing was returned to the landlord. The landlord sent another letter to both tenants on November 26, 2018 requesting that both sign the Amended Tenancy Agreement but received no response. A third letter was sent to both tenants on January 30, 2019 again asking that both tenants sign the Amended Tenancy agreement by no later than February 28, 2019 but received no response, so a notice to end the tenancy was issued. Copies of all letters have been provided as evidence for this hearing.

The landlord still hasn't received anything from the tenants except for an email from the tenant wife with the Amended Tenancy Agreement, but it didn't all come through on the email. The landlord asked on March 18, 2019 that the tenant wife print it and provide a full copy, but nothing has been received. The landlord testified that she still does not know who resides in the rental unit.

The landlord personally served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided as evidence for this hearing. It is dated March 8, 2019 and contains an effective date of vacancy of April 30, 2019. The reason for issuing it states:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause(s) section states:

“Tenant has failed to provide information to landlord in response to requests for information regarding change of occupants. Tenant has been advised in writing that failure to provide this information is a breach of their Tenancy Agreement.”

The landlord requests an Order of Possession.

The landlord's witness testified that on March 8, 2019 she was present and observed the landlord serve the tenant personally with both pages of the One Month Notice to End Tenancy for Cause dated March 8, 2019.

The tenant testified that he received the One Month Notice to End Tenancy for Cause and read it. He believed that he had 10 business days to dispute it, not 10 days.

The tenant further testified that he received the October 2, 2018 letter from the landlord and signed the Amended Tenancy Agreement and dated it. He then gave it to his ex-wife for her to sign and return to the landlord. He had no idea that his ex-wife had asked the landlord to have her name removed from the original tenancy agreement.

The tenant also received the letter from the landlord dated January 30, 2019, and was under the impression that the landlord had been in touch with his ex-wife and it had been taken care of. The tenant did not know that the landlord didn't receive the full signed Amended Tenancy Agreement from his ex-wife.

The tenant received a copy of the email dated March 18, 2019 from the landlord asking that his ex-wife bring in a copy of the signed form, but that was after the One Month Notice to End Tenancy for Cause was issued.

The tenant is confused that it would result in a 30 day eviction. Only the tenant resides in the rental unit with his daughter who lives there part time. The tenant doesn't talk to his ex-wife.

Analysis

The *Residential Tenancy Act* states that a tenant must dispute a One Month Notice to End Tenancy for Cause (the Notice) within 10 days of receipt and if the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. Only in exceptional cases should more time be granted.

In this case, there is no dispute that the tenant was personally served with the Notice on March 8, 2019, which was a Friday. The final day to dispute it is 10 days later, or March 18, 2019, which was a Monday, and I agree that there are 2 weekends within that 10 day period. The tenant filed the Application for Dispute Resolution on March 20, 2019.

The Notice contains "Information for Tenants" that states, in part:

- You have the right to dispute this Notice within 10 days after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice (you can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.
- Note: The date a person receives documents is what is used to calculate the time to respond; the deeming provisions do not give you extra time to respond.

The tenant also testified that he doesn't communicate with his ex-wife, but agrees that he received written requests from the landlord but left it to his ex-wife to return the signed Amended Tenancy Agreement. I have reviewed the tenancy agreement that the parties signed at the commencement of the tenancy, and I find that the information required by the landlord and the requirement to provide such information was agreed to by the parties and is a material term of the tenancy agreement. The tenant, whether deliberate or not, has ignored his obligations as a tenant.

In the circumstances, I am not satisfied that the tenant has provided compelling evidence to substantiate more time than prescribed to dispute the Notice. Further, I am not satisfied that the Notice should be cancelled, given that having no communication with his ex-wife, the tenant had any reasonable expectation or confirmation that his ex-wife had dealt with it, or any explanation for not returning the signed Amended Tenancy Agreement to the landlord in order to be compliant with the tenancy agreement. Therefore, I dismiss the tenants' application in its entirety without leave to reapply.

I have also reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the Notice is in the approved form, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on April 30, 2019 as stated in the Notice.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on April 30, 2019.

This order is final and binding and may be enforced.

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: April 25, 2019

Residential Tenancy Branch