Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 07, 2019 (the "Application"). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated April 23, 2019 (the "Notice"). The Tenants also sought an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenants filed an Amendment dated May 16, 2019 seeking to add a related claim in relation to their hydro being shut off.

The Tenants appeared at the hearing. The Landlord and Co-landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord testified that she did not receive the entire hearing package and only received the Application and some evidence. The Landlord testified that she received the Application May 10, 2019. She said she called the RTB that day and obtained the hearing information. I asked the Landlord what remedy she was seeking. She submitted that the Application should be dismissed.

I asked the Landlord what prejudice there was in proceeding in the circumstances. The Co-landlord submitted that the Tenants were trying to mislead the RTB and attempting to get a "default judgement". He said the Landlord did not have the hearing date and time or the file number from the Tenants. He submitted that the Tenants would have

had to physically remove the relevant papers from the hearing package before serving it and suggested this is misrepresentation or fraud.

Tenant R.N. testified that everything provided by Service BC was sent to the Landlord.

Even accepting the Landlord's position, I determined that there was no prejudice to the Landlord in proceeding given the following. She was aware of the Application May 10, 2019, well before the hearing. The Application relates to the Notice which she issued. She obtained the hearing information from the RTB May 10, 2019, well before the hearing. She did appear at the hearing and therefore whether the Tenants were trying to stop her from doing so or not is not relevant at this point. It is clear the Landlord had an opportunity to prepare for the hearing given she submitted numerous pages of evidence including evidence such as witness statements from prior tenants. Further, the Landlord was prepared to call two witnesses at the hearing. As well, there would be no reason the Landlord could not have prepared for the hearing given she was aware of the Application and hearing date and time as of May 10, 2019. In my view, there was no prejudice caused to the Landlord in proceeding with the Application whether the Tenants served the entire hearing package or not. I proceeded with the hearing.

The Landlord testified about what evidence she had received from the Tenants. She had received some. I told the parties they would be required to point to all relevant evidence they are relying on during the hearing and told the Landlord to let me know if there was a piece of evidence relied on by the Tenants that she did not have. I told the Landlord we would deal with service of any evidence she did not have if an issue arose. I told the Landlord this given the amount of evidence submitted and the time restraints of the hearing.

The Tenants confirmed they received the Landlord's evidence.

Rule 2.3 of the Rules of Procedure states:

> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply

I told the Tenants at the outset that the main issue before me is the dispute of the Notice and that I would only address their request for the Landlord to comply with the Act, regulation and/or the tenancy agreement and the hydro issue outlined in the Amendment if there was time during the hearing. The parties ended up coming to a settlement agreement as outlined below. I told the parties I would dismiss the

request for the Landlord to comply with the Act, regulation and/or the tenancy agreement and the hydro issue in the Amendment with leave to re-apply given these were not specifically dealt with in the settlement agreement and there was not sufficient time during the hearing to deal with these. These issues are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "*Act*").

There was no issue that there is a tenancy agreement between the parties in relation to the rental unit. The written agreement is between a previous owner of the rental unit and the Tenants. The Landlord testified that she purchased the rental unit in July of 2017.

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear the matter and make a final and binding decision in the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear the matter. If they did come to an agreement, I would write out the agreement in my written decision and make any necessary orders. The written decision would become a final and legally binding agreement and none of the parties could change their mind about it later.

The parties did not have questions about the above and agreed to discuss settlement.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

Settlement Agreement

The Landlord and Tenants agree as follows:

1. The Notice is cancelled.

2. The tenancy will end and the Tenants will vacate the rental unit no later than 1:00 p.m. on June 28, 2019.

3. The Tenants are not required to pay June rent and the Landlord waives her right to June rent.

4. The Tenants are permitted to leave behind one (1) couch and one (1) cabinet upon vacating the rental unit.

5. All other rights and obligations of the parties under the tenancy agreement will continue until 1:00 p.m. on June 28, 2019.

6. File Number 1 as outlined on the front page of this decision can be cancelled.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlord is granted an Order of Possession for the rental unit which is effective at 1:00 p.m. on June 28, 2019. If the Tenants fail to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenants with this Order. If the Tenants fail to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

I have looked up File Number 1 and see there is a cross-application with File Number 2. The parties did not provide this information during the hearing. If the parties want File Number 2 cancelled they need to provide this in writing to the RTB prior to the hearing. The parties can call the RTB for further information about cancelling File Number 2 if needed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 21, 2019

Residential Tenancy Branch