



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC LRE OLC**

Introduction

On August 8, 2019, I was appointed to hear the tenant's application pursuant to the Residential Tenancy Act ("Act") for:

- An order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

On August 8th, the hearing commenced at the appointed time of 9:30 a.m. with both parties participating. While the landlord was giving his testimony, his line disconnected at 9:55 a.m. On August 13th, I gave an interim decision to the parties advising that the hearing would be reconvened to today's date.

Both parties attended the hearing at the appointed time. As I had previously confirmed the landlord received the tenant's Application for Dispute Resolution and evidence as well as the tenant's receipt of the landlord's evidence, the hearing proceeded as scheduled.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

Issue(s) to be Decided

Did the tenant dispute the Notice to End Tenancy for Cause within 10 days of receiving it?

Background and Evidence

While I have turned my mind to all the documentary evidence, including text messages, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Testimony provided by the landlord at the original hearing on August 8th before the landlord's line disconnected has been incorporated into the background and evidence portion of this decision.

The landlord provided the following testimony. No tenancy agreement in writing exists between the landlord and tenant. The rental unit is one of two side by side basement suites. The landlord and his family lives upstairs. The tenancy began on February 15, 2019. Rent is currently \$850.00 per month, made up as \$830.00 paid by cheque and the additional \$20.00 as cash payments payable on the first day of the month.

On May 11, 2019 there was a fight involving the tenant and her boyfriend and the police were called. The tenant's boyfriend was arrested and taken away by the police. On May 24th, the now ex-boyfriend of the tenant broke into the tenant's rental unit and was subsequently arrested by the police. The landlord says they don't know whether the ex-boyfriend was invited onto the property by the tenant or not.

On June 1, 2019 the landlord served the tenant with the One Month Notice by leaving a copy on the tenant's door. The landlord also sent a photo of the Notice via social media messenger to the tenant on the same day. The landlord further testified that he personally gave the tenant a physical copy of the Notice at approximately 9:00 p.m. on June 1st. As evidence of this, the landlord points to the tenant's signature at the bottom of the Notice.

The landlord also provided screen shots of the text messages to indicate the messages were received on June 1st followed by texts from the tenant regarding convenient times to show the suite on June 2nd.

A copy of the Notice dated June 1st was provided as evidence by the landlord. The effective (move-out) date of June 1st is noted, as well as the reasons for the tenancy to end. The landlord lists the following reasons:

1. the tenant is repeated late paying rent;
2. the tenant has allowed an unreasonable number of occupants in the unit/site;
3. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
4. the 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 the landlord;
5. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
6. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;

No details of cause were provided on the Notice.

The tenant provided the following testimony. She moved into the rental unit on February 15th. Her rent is supposed to be \$830.00 per month but she agrees to pay an additional \$20.00 per month in rent because she does not want 'issues' with the landlord. On May 8th, her (now ex) boyfriend assaulted her. The police were called, the boyfriend was arrested and placed in jail. He was subsequently released and placed on bail including a condition that he not come near the tenant's home. On May 24th, the boyfriend breached this condition and the police were called.

The tenant disputes the landlord's testimony that she was given a copy of the Notice on June 1st, though she acknowledges the Notice was shown to her, she signed the bottom of the first page and took a photo of the first page. She notes the Notice was unsigned when shown to her. When she texted the landlord for a copy of the Notice, including the 2nd page, the landlord told her pages 1 and 2 were the same.

In evidence, the tenant provided text messages between the parties dated June 3rd where she asks for a 'solid copy' of the Notice. The landlord responded that he had given her a copy on June 1st and agrees to provide another copy when the tenant comes back home. The tenant reiterates that she only has a bad quality photo of one side of the pages. The tenant testified that she was given her copy of the Notice at

approximately 10:15 the evening of June 4th by the landlord's wife. Also in evidence, the tenant provided audio recordings of events taken on June 3, 4, and 8. The tenant provided further evidence of text messages dated June 5th where she and the landlord discuss an overpayment of rent and return of a 'damage deposit' that was above the legal limit for a deposit.

On June 2nd she allowed the landlords to show the rental unit, despite not having a copy of the Notice. The tenant testified she didn't want to cause problems for the landlord and she didn't know what else to do, so she allowed it.

The tenant denies each of the reasons provided in the landlord's Notice for ending the tenancy.

Analysis

A Notice to End Tenancy must be served in accordance with section 88 of the Act (reprinted below).

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 71(2) of the Act states

In addition to the authority under subsection (1), the director may make any of the following orders:

- a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Service Provisions are examined in detail in Residential Tenancy Branch Policy Guideline PG-12. Part 12 of the PG-12 describes service of documents and time to respond. The Guideline notes:

Generally, the object of service of documents is to give notice to the person who has been served that an action has been or will be taken against them. There is substantial case law that has held that the purpose of service is fulfilled once notice has been received.

Deeming provisions should not be relied on to calculate time to respond to service of a document. The date a person receives documents is what is used to calculate time. The Legislation contains provisions for the time frames within which a person must act upon having received documents. For example, s. 47 allows a landlord to end a tenancy by giving notice to the tenant. S. 47 (4) states that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. Therefore, a tenant must file their application for dispute resolution within 10 days of receipt of the notice.

At the dispute resolution hearing, if service or the time frame for having responded is in dispute, an arbitrator may consider evidence from both the

party receiving the document and the party serving the document to determine the date of service and the calculation of time a respondent had for responding. S. 71 (2)(b) gives an arbitrator the authority to order that a document has been sufficiently served for the purposes of the Act on a date the arbitrator specifies, upon consideration of procedural fairness and prejudice to the affected party.

...

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure indicates it's the landlord's burden of proof to show, on a balance of probabilities, the facts occurred as claimed when a tenant applies to cancel a Notice to End Tenancy.

In the case before me, both parties have provided conflicting testimony and documentary evidence as to when the Notice was served upon the tenant. Whereas the tenant is steadfast in her testimony that she didn't receive a 'solid copy' of the Notice until June 4th, the landlord is likewise adamant that he provided a copy to her on June 1st. The landlord has the burden of proof to show, on a balance of probabilities that his version of the facts is correct.

Turning to the evidence before me, the tenant acknowledges signing it and taking a photo of the first page of the Notice on June 1st, though she did not provide a copy of the photo she took to me as evidence. The tenant also acknowledges that on June 2nd, she sent a text message to the landlord allowing him to show the rental unit to prospective tenants. The text message string dated June 3rd also acknowledges she has a 'bad quality photo of only one side of the pages' – when the landlord says a 'solid copy' was given to her on June 1st. The audio recordings provided by the tenant are not sufficient for me to determine the date of the recordings.

While the tenant disputes the landlord's testimony that he provided a copy of the Notice to her on June 1st, the actions taken by the tenant following June 1st are consistent with the tenant having received the Notice, such as: allowing the landlord to show the rental

unit; making arrangements to find alternate housing; discussing the return of the security deposit. Given the evidence before me, I am satisfied I find that pursuant to section 71 of the Act, the landlord has successfully shown that the tenant received the Notice on June 1, 2019. I find a second copy of the Notice was given to the tenant on June 4, 2019.

Sections 47(2)(3)(4) and (5) of the Act state:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (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.

The tenant was found to have received the Notice on June 1, 2019 and filed an application for dispute resolution on June 14th, contrary to section 47(4) of the Act. Pursuant to 47(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit.

Pursuant to section 47(2) of the Act, the Notice must end the tenancy on a date that is the day before the day in the month that rent is payable under the tenancy agreement. Since this Notice was received on June 1, 2019, and rent is payable on the first day of the month, the effective date could not be any sooner than July 31, 2019. In accordance with section 53 of the Act, I correct the effective date to July 31, 2019.

I find that the landlord's One Month Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession

pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of 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: August 20, 2019

Residential Tenancy Branch