



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPL, OPC, MNRL-S, FFL

Tenant: MT, CNC, CNL, CNR, MNDCT, LRE, OLC, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel the Two Month Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy, pursuant to section 47;
- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Landlord's Use of Property, pursuant to section 49;
- an Order of Possession for Cause, pursuant to sections 47;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord attended the hearing for approximately two minutes at the beginning of the hearing. The landlord testified that his son, agent V.F. is his agent and has authority to speak on his behalf for these proceedings. The following agents of the landlord attended at this hearing: agent V.J., agent J.F., agent M.F., agent A.B., and agent N.B. The tenant attending this hearing. Each attendee was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that they received the other's application for dispute resolution via registered mail. Neither party could recall on what dates the applications were sent or received. I find that both the landlord's and the tenant's application for dispute resolution were served in accordance with section 89 of the *Act*.

The landlord testified that he received the tenant's two amendments via registered mail. Neither party could recall the dates the amendments were served or received. I find that the tenant's amendments were served in accordance with section 88 of the *Act*.

The tenant testified that he received the landlord's amendment in his mailbox. Neither party could recall the date the amendment was served or received. I find that the landlord's amendment was served in accordance with section 88 of the *Act*.

Preliminary Issue- Withdrawal of Claim

Agent V.F. withdrew the landlord's applications for a Monetary Order for unpaid rent, pursuant to section 67 and authorization to retain the tenant's security deposit, pursuant to section 38 because the tenant paid September 2019's rent on September 3, 2019.

Based on the above, I dismiss the landlord's claim for a Monetary Order for unpaid rent, and authorization to retain the tenant's security deposit with leave to reapply.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Notices to End Tenancy and the tenant's application for more time to cancel the Two Month Notice to End Tenancy

for Landlord's Use of Property are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss the following of the tenant's claims, with leave to reapply:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

Issues to be Decided

1. Is the tenant entitled to more time to cancel the Two Month Notice to End Tenancy, pursuant to section 66 of the *Act*?
2. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
3. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
4. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*?
5. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
6. Is the landlord entitled to an Order of Possession for Landlord's Use of Property, pursuant to sections 49 of the *Act*?
7. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 of the *Act*?
8. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began 17- 20 years ago and is currently ongoing. Monthly rent in the amount of \$1,435.00 is payable on the first day of each month. A written tenancy agreement was not signed between the parties. The tenant rents two side by side duplexes from the landlord. This dispute regards one of them.

Two Month Notice to End Tenancy for Landlord's Use of Property

Agent V.F. testified that on May 24, 2019 he personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of July 31, 2019 (the "Two Month Notice"). The tenant confirmed receipt of the Two Month Notice on May 24, 2019. The Two Month Notice was entered into evidence.

Agent V.F. testified that his son and daughter in law have outgrown their current accomodation as they have a one year old and a five-week premature baby. Agent V.F. testified that his wife plans on moving into the subject rental property with his son and daughter in law to help care for the young family.

The tenant applied to dispute the Two Month Notice on July 30, 2019, one day before the effective date of the notice.

The tenant testified that he filed to dispute the Two Month Notice more than 15 days after receiving it because he was trying to reason with the landlord and agent V.F. The tenant testified that the landlord did not tell him that agent V.F. would be acting as his agent. Both parties agree that agent V.F. completed the Two Month Notice on behalf of the landlord.

The tenant testified that he filed to dispute the Two Month Notice late because he was looking for new accomodation and trying to pack up and because he was in Mexico for the first three weeks of June 2019.

The tenant testified that he filed to dispute the subject rental property late because he was busy with his business and only works part time due to an old car accident injury. The tenant did not enter into evidence any documentation showing that he was medically unable to file his application on time.

The tenant testified that he was afraid that if he disputed the Two Month Notice, his tenancy at the neighboring duplex would be put in jeopardy. The tenant testified that the landlord never told him his other tenancy was in danger but that he implied it by his aggressive and passive aggressive actions. I asked the tenant to provide me with some examples of the landlord's alleged behavior and the tenant was not able to provide me with any. I asked the tenant if any of his documentation entered into evidence proved or supported his claims of aggression or hostility and the tenant testified that they did not.

Agent V.F. testified that the landlord, his father, is 91 years old and that he has power of attorney for him. Agent V.F. testified that he had authority to issue the tenant the Two Month Notice on behalf of the landlord. The power of attorney dated May 17, 2018 was entered into evidence.

The landlord entered into evidence a statement dated May 16, 2019, signed by the landlord, designating agent V.J., agent J.F., agent M.F., agent A.B., and agent N.B to act as his agents in relation to the subject rental property.

Agent V.F. denied acting in a hostile, aggressive or passive aggressive manner towards the tenant.

One Month Notice to End Tenancy for Cause

Agent V.F. testified that on August 2, 2019 he left a One Month Notice to End Tenancy for Cause with an effective date of September 6, 2019 (the "One Month Notice") in the tenant's mailbox. The tenant confirmed receipt of the One Month Notice on August 2, 2019. The tenant filed to dispute the One Month Notice on August 14, 2019, 12 days after he received it. The One Month Notice was entered into evidence.

Agent V.F. testified that he served the landlord with a One Month Notice to End Tenancy because on July 31, 2019 he completed an inspection at the subject rental property and found it to be in an unhealthy and hazardous state due to hoarding.

The tenant testified that there was stuff everywhere because the attic and closets had been emptied in an attempt to pack up and move out.

10 Day Notice to End Tenancy for Unpaid Rent

Agent V.F. testified that on August 2, 2019 he left a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of August 16, 2019 (the "10 Day Notice") in the tenant's mailbox. The tenant confirmed receipt of the 10 Day Notice on August 2, 2019. The 10 Day Notice was entered into evidence.

Both parties agree that the tenant's August 2019 rent was paid by August 3, 2019.

Analysis

Section 1 of the *Act* states that a "landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Pursuant to section 1 of the *Act*, and based on the landlord's testimony, the power of attorney and signed designation of agents, I find that agent V.F. had full authority to issue and serve the tenant with all of the notices to end tenancy.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. Policy Guideline 36 states:

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.

In this case, the tenant put forward a number of reasons why he did not file his application for dispute resolution in time. I find that none of the tenant's reasons amount to more than unsubstantiated excuses. I find that the tenant had time before his trip to Mexico to file to dispute the Two Month Notice. I find that the tenant has not proved, on a balance of probabilities that his old car accident injury prevented him from filing his application on time. I find that the tenant has not proved, on a balance of probabilities

that any of the landlord's agent acted in a threatening, aggressive or passive aggressive manner to him. Being busy with work and finding a new place to live is not an exceptional circumstance as outlined in Policy Guideline 36. I therefore dismiss, without leave to reapply, the tenant's application for more time to dispute the Two Month Notice.

Two Month Notice to End Tenancy for Landlord's Use of Property

Based on the testimony of both parties and the evidence provided, I find that service of the Two Month Notice was effected on the tenant on May 24, 2019, in accordance with section 88 of the *Act*. Upon review of the Two Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 49(5) and section 49(6) state that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the tenant did not dispute the Two Month Notice within 15 days of receiving it. I find that, pursuant to section 49 of the *Act*, the tenant's failure to file to dispute the Two Month Notice within 15 days of receiving the Two Month Notice led to the end of this tenancy on the effective date of the notice. In this case, that required the tenant to vacate the premises by July 31, 2019. As that has not occurred, I find that the landlord is entitled to a two day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit as required, the landlord may enforce this Order in the Supreme Court of British Columbia.

One Month Notice to End Tenancy for Cause

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant on August 2, 2019, in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47 is September 30, 2019. I find that the corrected effective date of the One Month Notice is September 30, 2019.

Pursuant to section 47 and 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

10 Day Notice to End Tenancy for Unpaid Rent

I decline to consider the validity of the 10 Day Notice as I have already found that this tenancy has ended under both the Two Month Notice and the One Month Notice.

Filing Fee

As the landlord was successful in this application I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 27, 2019

Residential Tenancy Branch