



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for more time to apply to cancel the notice to end tenancy, to cancel a One Month Notice to End Tenancy for Cause dated August 13, 2019 ("One Month Notice"), and for an order directing the Landlord to comply with the Act, regulation or tenancy agreement.

The Tenant and an agent for the Landlord, E.S. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said that she served the Application and Notice of Hearing documents on the Landlord in person at the business office. She also said that she served her documentary evidence "electronically through the normal channels". The Agent said she received the Notice of Hearing, but no documentary evidence from the Tenant. The Tenant explained that she understood that by uploading her evidence to the RTB and clicking another option that it would be automatically emailed to the Landlord.

I advised the Parties that the RTB does not serve evidence from one Party to another, and that the Tenant must have misunderstood the directions for serving evidence on the Landlord. Since the Landlord did not have the Tenant's documentary evidence, I advised the Parties that I would not be considering the Tenant's evidence, other than

the copy of the One Month Notice, which they were both aware of prior to the hearing. The Landlord did not submit any documentary evidence for service on the Tenant or for my consideration.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated varied matters of dispute on the Application, the most urgent of which are her applications for more time to apply for dispute resolution, and to set aside a One Month Notice. I find that the Tenant's claim for An Order for the Landlord to Comply with the Act or tenancy agreement is not sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's requests for more time and to set aside the One Month Notice at this proceeding. The Tenant's other claim is dismissed, without leave to re-apply.

Issue(s) to be Decided

- Is the Tenant entitled to More Time to Apply to Cancel the One Month Notice?
- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2015, with a current monthly rent of \$1,018.06, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$447.50, and no pet damage deposit. The Parties agreed that the Tenant paid rent for December 2019.

The Parties agreed that the One Month Notice was signed and dated August 13, 2019, and served on the Tenant by mail. Pursuant to section 90 of the Act, I find it was, therefore, deemed received by the Tenant on August 18, 2019, with an effective vacancy date of September 30, 2019. The One Month Notice stated that the ground for

the eviction notice is: a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

More Time to Apply

Section 47(4) of the *Residential Tenancy Act* states that a tenant may dispute a one Month notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. I have found that the Tenant was deemed served with the One Month Notice on August 18, 2019. As a result, she had until August 28, 2019, to apply to dispute the One Month Notice. However, the Tenant applied for dispute resolution on September 20, 2019.

Section 66 of the Act states that a time limit established by this Act may only be extended in exceptional circumstances.

In the hearing, the Tenant said:

Generally, when I called in [to RTB], I was told that I had to start my Application and would have time after to finish it. I went with that information. I went through the process and had something go wrong with the form. I got help with what was going on, but it was constantly being erased. I had to go to the end of the process which included evidence.

The Agent said: "We feel [the One Month Notice] shouldn't be dismissed, because she hasn't followed directions as to how to apply for dispute resolution."

I told the Parties that I did not make decisions in hearings, but would consider all the evidence before me after the hearing; therefore, we continued with the other issue before me.

One Month Notice

The Agent stated:

The material breach was the Tenant living with an occupant who is not listed on the tenancy agreement. We sent her letters advising of these issues, but never heard anything back, twice. We just needed her occupants to be listed in the lease.

If [the Tenant] had followed the directions in the lease, this wouldn't have gotten this far. If there were any questions, she could have contacted us, but we got no contact from her. Normally we could have worked this out without an eviction.

Although no one uploaded a copy of the tenancy agreement to the RTB as evidence, the Agent read what she identified as a material term of the tenancy agreement, which states that parties not identified on the tenancy agreement – or occupants - are considered trespassers after living in the rental unit for more than ten consecutive days. The Agent also said that this section of the tenancy agreement gives the Landlord the right to terminate the tenancy immediately. The Tenant did not dispute this section of the tenancy agreement.

The Tenant said that the building manager was aware of the Tenant's boyfriend living there and gave the Tenant a second set of keys. The Tenant said that she does not talk to the property manager, unless she has an issue; rather, she relies on communication with the building manager. The Tenant said: "my partner stays with me on and off. I have nothing to hide. Now that I see it in the contract, it scares me that they call him a trespasser."

The Tenant said that she had a verbal agreement with the building manager who had given her extra keys. "This is not the first time that I've had someone stay with me for more than 10 days, and it's been alright."

The Agent said:

The Tenant received a first warning on July 31, about this part of the lease; we needed additional guests added to our lease agreement. We got no reply. The only reason this started was because [the building manager] advised us that there appeared to be someone living there other than [the Tenant]. We could have dealt with it, but there was no response. It comes back to not following directions that are written on there. There are rules. We advise tenants of the rules, but if we don't get a reply.... I wouldn't have suspected that there was someone living there for more than 10 days if [the building manager] had not advised me of the situation.

The Tenant replied:

[The building manager] has known about my boyfriend staying with me for over a

year. The request in writing to notify that I have a tenant was in the context of an actual eviction. I had him stay more than ten days. I remember calling [the RTB] to get advice. I was more focused on the dispute. I had a pretty scary situation with Devon properties; I didn't know what the best thing to do was, strategically. I trusted [the building manager]. It's not that I didn't want to reply, but the advice that I got was to immediately get a dispute in motion.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

More Time to Apply

I find from the Tenant's testimony that there is a chance she was late in applying for dispute resolution, because of technical difficulties with the RTB system. However, the Tenant was 23 days or over three weeks late applying to dispute the One Month Notice. Given that tens of thousands of people successfully apply for dispute resolution through the RTB every year, I find it more likely than not that the Tenant did not follow directions properly, which led to her late Application. This finding is based in part on the Parties' testimony regarding the warning letters that the Tenant acknowledged having received from the Landlord, but to which she did not respond. This led the Agent to issue the One Month Notice. I find that the Tenant's failure to follow the directions of the Agent in the warning letters and the tenancy agreement are consistent with her failure to successfully apply for dispute resolution before or even near the deadline to do so.

The Tenant said she relied on the building manager for communication with the Landlord; the "parol evidence rule" states that oral agreements do not override written contracts such as the tenancy agreement. Further, the Tenant did not indicate that she discussed the warning letters with the building manager or with anyone else. I find the Tenant's behaviour has led to her current situation, and I dismiss her Application for more time to apply for dispute resolution without leave to reapply.

As a result, I need not consider her attempt to dispute the One Month Notice. Accordingly, I find that the One Month Notice is not cancelled.

I find that section 55 of the Act applies to this situation and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an Order of Possession.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. I find that the Notice issued by the Landlord meets the requirements for form and content and, as such, that the Landlord is entitled to an Order of Possession based on the One Month Notice.

I dismiss the Tenant's Application wholly and I award the Landlord with an Order of Possession.

Conclusion

The Tenant is unsuccessful in her Application for more time to apply to cancel the One Month Notice, and therefore, her Application to cancel the One Month Notice is also dismissed.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on December 31, 2019 at 1:00 p.m. **after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 03, 2019

Residential Tenancy Branch