Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MT LRE OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, by teleconference, was held on April 28, 2020. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both Tenants and the Landlord attended the hearing and provided testimony.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending and whether or not the Tenants should be given more time to file this application. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenants' application with the exception of the following ground:

- Are the Tenants entitled to more time to file their application to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), and should the Notice be cancelled?

Preliminary Matter –Service

The Landlord confirmed receipt of the Tenants' application package and Notice of Hearing on March 5, 2020. The Landlord also confirmed receipt of the Tenants' evidence package on April 3, 2020. Although the Landlord was not happy about having to pick up the evidence in person, on April 3, 2020, I note he provided the address he had listed as his address for service was the address of the rental property. The Tenants stated there is no proper mailbox and since they did not have a computer, this was the only way to serve the Landlord (who doesn't actually live in the rental complex).

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

Emailed documents will be deemed received as follows:

- If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
- If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
- If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

Even though personal service is not an endorsed method of service during the pandemic, I find the Landlord did not leave many options, given the lack of mailbox at the house and the fact he had his address for service at the rental property. Ultimately, the Landlord received the package and confirmed he was able to read and understand its contents with plenty of time to spare before the hearing. I find the Tenants sufficiently served the Landlord with their Notice of Hearing, application, and evidence for the purposes of this proceeding.

With respect to the Landlord's evidence, I note he sent his evidence by email, on April 22, and April 28, 2020. The Tenants confirmed that they received the Landlord evidence but were not clear on when. Although some of this evidence was served late, the Tenants stated there were able to open the email, and they also indicated they had time to review and respond to the evidence. Given this, and the fact the Tenants did not take issue with the timing of the service of the Landlord's evidence, I find the Landlord sufficiently served the Tenants with his evidence for the purposes of this hearing.

All parties appeared to have received, fully understood and had time to respond to all of the evidence presented and uploaded. As such, I do not find there was any prejudice to either party with respect to admitting the evidence, even if it was served later than would normally be expected.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Landlord vs. "Head Tenant"

The parties both raised the issue as to whether the Landlord was the Landlord or whether he was a "head tenant". I find I must make a determination on this issue before proceeding.

I note the Act defines a Landlord as follows:

> *"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;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

[my emphasis added]

The personal listed as the Landlord on this application has a rental agreement with the owner of the house where he rents the whole multi-bedroom house, and subleases out different bedrooms under separate tenancy agreements. The Landlord confirmed he has written permission from the owner to rent out rooms to others. The Landlord also stated that he does not live in the house, and is merely a house manager of sorts, overseeing the subleasing of the rooms. The Tenants on this application have a tenancy agreement with the Landlord (who rents the whole house from the owner).

Having reviewed the totality of the situation, I find the Landlord listed on this application is a Landlord under the Act, since he does not occupy space in the house, and was entitled to possession of the rental unit (under their original tenancy agreement with the owner for the whole house).

The Tenant's (on this application) contractual rights and obligations are as set out in the Tenancy Agreement between them and the Landlord listed on this application. Generally speaking, the Tenants on this application would not acquire the full rights provided to tenants under the Act, due to how the agreements are set up. Further, the Landlord on this application, who rented the house from the owner and is subletting the rooms also do not have all the responsibilities that a landlord has under the Act (such as paying for certain repairs).

In the event of a dispute, the Tenants as listed on this application may apply for dispute resolution against the "head tenant" who is a Landlord for the purposes of the Act, but likely not the owner of the house, unless it can be shown there has been a tenancy created between the owner and the tenants on this application. In this case, there is no evidence there is a tenancy agreement between these Tenants and the owner. As such, there is no contractual relationship between the owner and these Tenants.

For the purposes of this decision, I find the Landlord as listed on this application is a Landlord for the purposes of this proceeding.

Issue(s) to be Decided

- Should the Tenants be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
    - If not, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenants have applied for more time to make an application to cancel the Notice. Given that the Tenants applied late, I find the Tenants' request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenants stated that they received the Notice on February 12, 2020. The Tenants also provided a copy of this Notice into evidence, which lists several grounds for ending the tenancy.

Section 47 of the *Act* states that 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. As the Tenants received the Notice on February 12, 2020, they had until February 22, 2020, to dispute the Notice. However, since February 22, 2020, is a Saturday, the Tenants had until Monday February 24, 2020, to submit and pay for their application with our office (first business day after the lapse of the 10 day period).

Rule of Procedure 2.6 states:

> **2.6 Point at which an application is considered to have been made**
> The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

I note the Tenants stated they mailed in their application in to the RTB on February 18, 2020. However, there is no record of this being sent by the Tenants or received by our branch, prior to March 2, 2020. The Tenants did not provide any proof of mailing to support they submitted their application such that I could find it was received by the RTB and paid for before the lapse of their application deadline.

The Tenants provided a copy of their application form which shows it was stamped as received on March 2, 2020, despite it being signed by the Tenant on February 18, 2020. Our system reflects that the Tenants' application was not submitted or received prior to March 2, 2020.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

Due to COVID-19, I note the government has issued some practice directives which are in effect during the state of emergency. These directives include more leniency with respect to timelines for filing applications, and submitting evidence. That being said, the state of emergency and related practice directives, providing for alternative service and application timelines were not brought into force until March 30, 2020, and are focused on people that have been impacted by COVID in a way that prevents them from adhering to prescribed timelines.

I find there is insufficient evidence that this application was delayed by anything to do with COVID-19, such that it warrants extra time to file the application. It is not clear why the Tenants were unable to complete their application in the requisite timeframe as they did not clearly articulate why they were 8 days late making their application, other than saying this is their first time filing an application.

I do not find the Tenants have sufficiently demonstrated that their circumstances were exceptional, such that it warrants extra time to file an application for review.

As a result, I find that the Tenants are not entitled to more time to make an Application to cancel the Notice and their late Application is therefore dismissed in its entirety.

As the Tenants' Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act.* 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 the Landlord is entitled to an order of possession. The Order of Possession will be effective at 1:00 P.M. on May 31, 2020.

Since the Tenants were not successful with their application, I decline to award them recovery of the filing fee.

Conclusion

The Tenants' request for more time to make an application to cancel the Notice is dismissed. Further, the Tenants' application to cancel the Notice is also dismissed.

The landlord is granted an order of possession effective **May 31, 2020, at 1pm**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: April 29, 2020

Residential Tenancy Branch