



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”);
- An order for the Landlord to comply with the Act, regulation or tenancy agreement;
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit; and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The Landlord acknowledged being served with the Notice of Dispute Resolution Proceeding, including a copy of the Application and notice of the hearing, by registered mail on or about January 30, 2020.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Matter #1

Rules 2.5 and 3.14 of the Rules of Procedure state that to the extent possible, the applicant should submit to the Branch and serve on the respondent copies of all other documentary and digital evidence to be relied on in the proceeding at the same time as the application, and that in any event, evidence the applicant wishes to rely on in the hearing must be received by the respondent and the Branch not less than 14 days before the hearing. When asked, the Tenant stated that they did not serve copies of the documentary evidence before me on the Landlord as they were not aware that this was a requirement.

The ability to know the case against you and provide evidence in your defence is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept the Tenant's evidence for consideration in this matter as the Landlord has not had an opportunity to review and respond to it. As a result, I have excluded the Tenant's documentary evidence, with the exception for the One Month Notice, from consideration in this matter.

The Landlord stated that they served copies of their documentary evidence on the Tenant on March 25, 2020, by posting a copy to the door of the rental unit. While the Tenant acknowledged receipt on or about that date, they stated that the Landlord intentionally withheld this evidence until close to the hearing, making it difficult for them to respond.

The documentary evidence before me from the Landlord was submitted to the Branch on February 28, 2020, and I therefore inquired why the evidence had been withheld from the Tenant until March 25, 2020. The Landlord stated that they had until seven days prior to the hearing to serve their evidence on the Tenant, so they withheld it until shortly before that date.

Rule 3.15 of the Rules of Procedure states that the respondent must ensure evidence that they intend to rely on at the hearing is served on the applicant and submitted to the Branch as soon as possible, and in any event, not less than seven days before the hearing. This means that it was incumbent upon the Landlord to serve their evidence on the Tenant as soon as possible and I find that the Landlord was therefore not entitled to withhold the service of these documents simply because the Rules of Procedure allow

for service closer to the date of the hearing when necessary. As the Landlord submitted their evidence to the Branch on February 28, 2020, there is no valid reason why they were unable to serve it on the Tenant that date and I find that they therefore unreasonably delayed the service of this evidence.

Rule 3.11 of the Rules of Procedure states that evidence must be served and submitted as soon as reasonably possible and that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

As a result of the above, I therefore excluded the Landlord's documentary evidence submitted to the Branch on February 28, 2020, from consideration in this matter as the Landlord unreasonably delayed the service of this evidence on the Tenant.

Matter #2

During the hearing I identified that only the Tenant has submitted a copy of the first page of the One Month Notice for my consideration and that neither party had submitted the second page of the One Month Notice for my consideration. The parties were both in agreement that a second page had been served so I accepted affirmed testimony in the hearing about the form and content of the second page and ordered both of the parties to submit a copy of the second page to the Residential Tenancy Branch (the "Branch") no later than 4:30 P.M. (Pacific Time) on Monday April 6, 2020.

There was also a dispute between the parties regarding whether one or two One Month Notice's had been served. The Landlord stated that a One Month Notice served on the Tenant on March 25, 2020, was simply a copy of the first One Month Notice served on the Tenant on January 23, 2020. However, the Tenant stated that they had two copies of the One Month Notice from the Landlord with different effective dates. As a result, I ordered the Tenant to submit a copy of the second One Month Notice to the Branch no later than 4:30 P.M. (Pacific Time) on Monday April 6, 2020. I also advised both parties that if I did not receive these documents by the deadline, I would render my decision in their absence, which may impact the outcome of the decision.

On April 3, 2020, the Tenant submitted the above noted documents as ordered. The Landlord did not. As the Tenant submitted the requested documents as ordered, I accepted them for consideration in rendering my decision.

Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Matter #4

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Rule 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.

As the Tenant applied to cancel a One Month Notice, I find that the priority claims relate to whether the tenancy will continue or end. I find that the other claims made by the Tenant are not sufficiently related to the One Month Notice and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement; and
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit.

As a result, the hearing proceeded based only on the Tenant’s Application seeking cancellation of a One Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant’s Application seeking cancellation of the One Month Notice is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Landlord stated that the Tenant's rental unit is dirty and unkempt, that the Tenant regularly violates both the terms of their tenancy agreement and the law by smoking in the rental unit and on the property, that they regularly disconnect the fire alarm and have stolen a carbon monoxide detector from the rental unit, that they damaged the heating element of the oven due to a fire in the oven and that they regularly leave the rental unit unlocked. As a result, the Landlord stated that they feared for their own health and safety and the safety of the rental unit itself, and a One Month Notice was subsequently served on the Tenant.

The Landlord stated that the One Month Notice was placed under the door of their shared laundry room for the Tenant on January 23, 2020. The Tenant acknowledged receipt of the One Month Notice on or about January 23, 2020, but argued that this was not an acceptable form of service under the *Act*. While the Tenant acknowledged that their rental unit had been dirty, they stated that it was professionally cleaned before the service of the One Month Notice on January 23, 2020, and denied the remaining grounds for service of the One Month Notice stated by the Landlord in the hearing. Although only the first page of the One Month Notice was submitted for my consideration by the Tenant, both parties agreed in the hearing that a second page was served. As a result, I accepted the affirmed testimony of the parties regarding the form and content of the second page and ordered them to submit a copy for my review as outlined in the Preliminary Matters section of this decision.

The Tenant stated that a second One Month Notice was served by the Landlord on March 25, 2020, by posting a copy to their door. The Tenant stated that the second One Month Notice was identical to the first but had an effective date of March 30, 2020, instead of February 29, 2020. The Landlord acknowledged posting a One Month Notice to the door of the Tenant's rental unit on March 25, 2020, but stated that it was an exact copy of the first One Month Notice and was posted as it forms part of their evidence package for the hearing, not because they were serving or intending to serve another One Month Notice.

Analysis

Although the Tenant provided me with two separate One Month Notice's, these notices appeared identical except for their effective dates. Both were signed and dated on

January 23, 2020, however, one had an effective date of February 29, 2020, and one had an effective date of March 30, 2020. In the hearing the Landlord provided affirmed testimony that they had served only one One Month Notice, and that the One Month Notice provided to the Tenant on March 25, 2020, as part of their evidence package was simply another copy of the same One Month Notice served on January 23, 2020, and therefore did not constitute service of a second One Month Notice.

The Tenant has provided me with clear evidence, which I find both credible and reliable, that the second One Month Notice provided to them by the Landlord on March 25, 2020, is not in fact a copy of the first One Month Notice as stated by the Landlord as it contains a different effective date. As a result, I am concerned that the Landlord did not provide accurate or truthful testimony in the hearing when they stated that the One Month Notice posted to the door of the Tenant's rental unit on March 25, 2020, was simply a copy of the One Month Notice placed under the door of the shared laundry room on January 23, 2020. However, as the Landlord was adamant in the hearing that they only served and intended to serve one Notice to End Tenancy on the Tenant, I have treated both of the One Month Notice's in the documentary evidence before me as one. I have therefore referred to them collectively as the "One Month Notice" below.

The Landlord stated in the hearing that the One Month Notice was first served on the Tenant on January 23, 2020, by placing a copy under the door of the shared laundry room. While I find it important to note that this is not an approved form of service under section 88 of the *Act*, and the Landlord should refrain from serving documents in this manner in the future, as the Tenant acknowledged receipt of this One Month Notice and a subsequent copy posted to their door on March 25, 2020, I find that they were sufficiently served with the One Month Notice for the purposes of the *Act* pursuant to sections 71 and 88 of the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing, signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and when given by a landlord, be in the approved form.

The One Month Notice form (#RTB-33) used by the Landlord is from March of 2011, almost 9 years prior to the date the One Month Notice was served and is different in both form and content from the current One Month Notice form available. Further to this, the Landlord has significantly altered the second page of the One Month Notice by whiting out several sections and writing in their own grounds for issuing the One Month

Notice. Based on the above, I find that the One Month Notice does not comply with section 52 (e) of the *Act* as it is therefore not in the approved form.

As a result, I find that the One Month Notice is of no force or effect it does not comply with section 52 of the *Act* and I grant the Tenant's Application seeking cancellation of the One Month Notice. I therefore order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*. As I have already found that the One Month Notice is invalid because it does not comply with section 52 of the *Act*, I have made no findings of fact or law in relation to the grounds noted in the One Month Notice by the Landlord for ending the tenancy.

Pursuant to section 72 of the *Act*, I authorize the Tenant to deduct \$100.00 form the next months rent, or to otherwise recover this amount from the Landlord, for repayment of the filing fee.

Conclusion

I grant the Tenant's Application seeking cancellation of the One Month Notice and order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I authorize the Tenant to deduct \$100.00 form the next months rent, or to otherwise recover this amount from the Landlord, for repayment of the filing fee.

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 9, 2020

Residential Tenancy Branch