



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 16, 2020, wherein the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on March 16, 2020 (the "Notice"), as well as monetary compensation for unpaid rent in the amount of \$6,000.00.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on June 4, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* (the "Rules"). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenant's Name

At the outset of the hearing the Tenant confirmed the spelling of her surname. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* (the "Act"), I amend the Landlord's Application for Dispute Resolution to correctly spell the Tenant's name.

Preliminary Matter—Relief Sought

Hearings before the Residential Tenancy Branch are governed by the *Rules*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Rule 2.3 provides 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.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Landlord's monetary claim; accordingly, I exercise my discretion and dismiss the Landlord's monetary claim with leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began approximately six years ago. He stated that rent was originally \$1,100.00 but has increased to \$1,300.00.

The Landlord stated that the property is three acres and includes the rental unit as well as a trailer which he rents to another tenant, S.T. The Landlord alleged that the Tenant moved from the rental unit to another community, leaving her two children, and began renting out other rooms as a "hostel" which is illegal as the secondary suite is not legal. The Landlord also alleged that the Tenant has been using the wrong name for him such that he has not been able to receive the rent payments.

The Landlord testified that he signed the Notice on March 16, 2020. The reasons cited on the Notice are as follows:

- the Tenant has engaged in illegal activity that has caused or is likely to

- jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the Tenant has caused extraordinary damage to a rental unit or residential property;

When asked to provide further details as to his reasons for ending this tenancy the Landlord wrote as follows:

“Tenant has jeopardised a lawful right of another tenant occupant in the basement suite of illegal activity (no contract offer to me by tenant who lives in another property with a boyfriend in [location withheld] offered to me.”

[reproduced as written]

In terms of service of the Notice, the Landlord testified that he does not live in the community in which the rental unit is located. He stated that on the “same day as he signed the Notice” he traveled to the rental unit and gave the Notice to S.T. who lives on the same property in a trailer and works for the Landlord. The Landlord stated that he witnessed S.T. gave the Notice to the Tenant’s son, who he believed was 18 years old.

The Landlord was not able to recall the exact date he witnessed service on the Tenant’s son but reiterated that it was the same day that he signed it. He also stated that he did not believe the Tenant’s son gave it to her although he witnessed the Tenant’s son bring the document into the house.

In reply to the Landlord’s testimony the Tenant stated that she received the Notice on April 2, 2020. She stated that her son, C., who is 21 and has special needs, found it on the coffee table and sent a text to the Tenant. The Tenant provided copies of these texts in evidence which indicated this texting exchange occurred on April 2, 2020.

The Tenant confirmed that she moved from the community in which the rental unit is located as she was staying with her boyfriend, but claimed she was at the residence on March 16, 2020 as she was in the rental unit from February 15, 2020 to March 20, 2020. In written submissions the Tenant wrote that she was renovating a bedroom on March 16, 2020 and was therefore at the rental unit.

The Tenant stated that C. is 21 years old but has special needs due to a mood disorder. She confirmed that he is self sufficient and has a driver’s license, but he is emotionally 5 years younger than his age.

The Tenant also stated that the Notice C. found is not the same as the Notice the Landlord submitted in evidence. She also stated that the Landlord dropped off other notices to end tenancy some of which were incomplete.

The Tenant stated that the Landlord just walks into the property and leaves stuff on the table.

In reply the Landlord stated that he has been to the community in which the rental unit is located "many times" since March 16, 2020.

Analysis

After consideration of the testimony and evidence before me I find as follows.

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. In this case, the Landlord seeks to end the tenancy for cause pursuant to section 47 of the *Act*.

In all cases a notice to end tenancy must comply with section 52 of the *Act* in terms of form and content; with respect to notices to end tenancy for cause, this requirement is specifically provided for in section 47(3)

I have reviewed the text messages provided in evidence by the Tenant which show her exchange with her son and which include screen shots/photos of the documents the landlord provided. The screen shots/photos indicate the Landlord provided the Tenants numerous notices to end tenancy; including:

- a 1 Month Notices to End Tenancy which is not dated but includes the following details:

Owner/Landlord has informed Tenant S.Y. not to subdivide or rent basement of house to other person she uses. To give her money to pay half of rent to her to only pay \$3500. Can to give to me- owner to pay B.C. Hydro.

[Reproduced as Written]

- a 1 Month Notice to End Tenancy which is dated April 17, 2020;
- a 1 Month Notice to End Tenancy which is dated April 30, 2020.

- a blank 2 Month Notice to End Tenancy.

The Landlord submitted in evidence a copy of a 1 Month Notice to End Tenancy which is dated March 16, 2020. The date utilizes the number 3 for March which is clearly written over the number 4 (presumably for April). The postal code on the Landlord's copy has also been altered such that the V in the postal code is more prominent and is written outside the designated box. The copy of the Notice provided by the Landlord in evidence does not match any of the notices provided in evidence by the Tenant, although it most closely resembles the notice which is dated April 17, 2020.

The Tenant alleged that the Landlord dropped these notices off on her coffee table. The Landlord testified another renter provided the March 16, 2020 Notice to the Tenant's son on March 16, 2020. The Tenant provides text communication between her and her son which suggest her son found the notices on the coffee table. The date of this electronic exchange is April 2, 2020.

I accept the Landlord's evidence that he witnessed S.T. serve a notice to end tenancy on the Tenant's adult son. For the purposes of section 88(e) I find this to be effective service. Although the Tenant described her son as having special needs due to a mood disorder, she conceded that she left her son and her other adult son to live independently at the rental unit while she stayed with her boyfriend such that I find her 21 year old son is able to accept service on her behalf.

Despite this finding, and after reviewing the documentary evidence provided by both parties, I am unable to find the Landlord served the 1 Month Notice to End Tenancy for Cause, dated March 16, 2020, on the Tenant's adult son on March 16, 2020. While the Tenant was provided with numerous notices to end her tenancy, most of those documents were incomplete and none of those documents were dated March 16, 2020. From my review of the March 16, 2020 Notice it appears as though it was altered at some point.

The Landlord was not able to testify as to the exact date he witnessed C.T. serve the Tenant's son. He insisted it was on the same day the Notice was signed. As I am not satisfied the March 16, 2020 Notice was signed on that date, I am unable to find that the Tenant's son was served on March 16, 2020.

The Tenant alleged the Landlord comes into the rental unit and leaves documents on the kitchen island or coffee table. This appears consistent with the number of Notices her son sent to her by text message. Further, the Landlord admitted that he had been

to the community in which the rental unit is located on numerous occasions. In all the circumstances, I find it likely the Landlord witnessed C.T. serve the Notice on the Tenant's son on another date, although I am unable to make a finding as to when that was.

On March 18, 2020, the Provincial Government declared a state of emergency. On March 30, 2020, the Minister of Public Safety and Solicitor General enacted Ministerial Order. No. M089, the *Residential Tenancy (COVID-19) Order*, pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 110. Pursuant to this Order, a landlord may not issue a notice to end tenancy for unpaid rent. Further, a Landlord may not enforce an Order of Possession which was obtained for unpaid rent.

I find the Landlord has failed to provide he served a valid notice to end tenancy on the Tenant prior to March 30, 2020 and as such I dismiss the Landlord's claim for an Order of Possession based on the March 16, 2020 1 Month Notice to End Tenancy for Cause.

Conclusion

The Landlord's Application for an Order of Possession based on the March 16, 2020 1 Month Notice to End Tenancy is dismissed. The tenancy shall continue until ended in accordance with the *Act*.

The Landlord's Application for monetary compensation from the Tenant is dismissed with leave to reapply.

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: June 08, 2020

Residential Tenancy Branch