



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

The landlord applies for an order of possession pursuant to a one month Notice to End Tenancy for cause dated July 14, 2020, for a monetary award for unpaid August rent and utilities of \$745.00 and for recovery of the \$100.00 filing fee paid for this application.

This matter first came on for hearing on September 15. It was adjourned to the next day to permit the tenant to upload evidence and arrange for a witness, Mr. TF, to attend.

On September 16 the matter was adjourned to this day as the tenant's witness was out of town and she had not been able to navigate the document uploading procedures of the Residential Tenancy Branch ("RTB").

Today the matter came on for hearing. Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing, but for two emails the tenant was permitted to read into the record.

The tenant indicated that she had not uploaded evidence. Her request for another adjournment was not agreed to by the landlord and was refused by this arbitrator as it would carry the matter over into another month of possible loss of rental income for the landlord.

The tenant asked that she be permitted to send her evidence it to this arbitrator directly. She had not provided the landlord with any documentary evidence. She was informed that was not possible. She was allowed to read the evidence, two emails from witnesses regarding her health in June-July 2020, as part of her testimony.

Issue(s) to be Decided

Was the one month Notice duly served on the tenant? If so, are there extenuating circumstances for her failure to challenge the Notice within the statutory ten day period following receipt? What if any rent money is owed?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started December 1, 2019. There is a written tenancy agreement. The monthly rent was originally \$800.00 plus \$55.00 for cable/internet. The landlord holds a \$400.00 security deposit. Shortly after the start of the tenancy the rent was reduced to a total monthly sum of \$745.00.

The landlord testifies that the rent was late in January, February and March. February, he says, still has not been paid. He admits that February rent was not paid on February 1st because his accountant neglected to take it from the tenant's account on that day, as had been arranged. He says that even despite the error and the tenant being informed of it, the rent for February has not been paid and so it is "late."

He served the tenant with ten day Notices to End Tenancy for unpaid rent in January, March and July though it appears that the July ten day Notice was for the still unpaid February rent.

The landlord testifies that he served the tenant with the one month Notice in question in this proceeding by attaching it to the door to her suite on July 14, 2020. He has filed a proof of service document in which a person named JS confirmed he saw that service. The Notice alleges that the tenant was repeatedly late paying rent, citing late rent in the months January, February and March 2020. It also alleges the tenant or her guest(s) had engaged in illegal activity that had or was likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submits a ledger or accounting reconciliation prepared by his accountant showing that on August 1, 2020 the tenant paid the \$745.00 rent by cheque on August 1 but the cheque was returned for insufficient funds ("NSF"). He says it remains unpaid.

He notes that there was ongoing discussion with the tenant about the rent and the Notices and he produces a written agreement dated July 20 and signed by both, wherein the parties agree that regarding the July ten day Notice to End Tenancy for unpaid rent, the tenant would pay \$400.00 on July 20 and the balance before July 29 (the landlord's ledger shows a full payment of \$745.00 being made on July 20).

The agreement also states that the one month Notice, the Notice in question here, was still operative and that the tenant was expected to vacate by the end of August, the effective date in the Notice but "if she choice (*sic*) to appeal the 30 day notice this is her decision to make."

The witness Mr. TF gave evidence. He is also a tenant of this landlord and lives above the tenant. He acknowledges that "in June or July" he passed along \$220.00 from the tenant to the landlord (it is noted in the landlord's ledger and shows a pay date of July 26).

Mr. TF gave evidence about lawn clippings being found on a patio but that evidence is not particularly germane to the issues in this application.

The tenant testifies, and it is not in dispute, that she had been kidnapped, held for three days, drugged with horse tranquilizers and violently assaulted by a former partner in June 2020. He is now facing charges over the matter. She was admitted to a hospital in the lower mainland on June 28 and later transferred to a hospital in this community. She says it is all a blur to her as throughout the month of July she was heavily medicated. During her testimony she recited a long list of drugs she was or had been on, including morphine.

As a result, she says, she doesn't remember anything that happened in July and should not held to the July 20 agreement nor deemed to have received the one month Notice in question here.

The tenant reads out emails from two people who confirm that she had been suffered violence in June and was heavily medicated in July. One author, Mr. MS, stated she had been hospitalized from the end of June unit late July.

The tenant testifies that even had she wanted to move out, the landlord has slandered her throughout this small community and she could not find a new place to live.

In reply the landlord notes that in July the tenant looked as though she had been physically beaten up but mentally she appeared fine to him.

He refers to a text message sent to him from the tenant on July 3 indicating she was being transferred to the local hospital. He replied that he'd been checking her mail for her and that a parcel had arrived. By reply message she requested that he put it under a cushion for her.

The landlord shows that the parties exchanged messages again on July 14. He texted in the late morning that there was a notice on her door (the one month Notice he'd attached). She replied shortly after noon that she was going to the tenancy board and that she was not responsible for his accountant's mistake (a reference to the unpaid February rent). Her message notes that she was not even a week out of hospital, that she'd planned to make a payment on the 20th and that she knew her rights.

Analysis

Allegations in the Notice

A tenant wanting to challenge the grounds in a Notice to End Tenancy must make an application do so within the time limits set out in s. 47 of the *Residential Tenancy Act* (the "RTA") A tenant failing to make such an application is "conclusively presumed" by s. 47(5) to have accepted the tenancy will end on the effective date in the Notice.

As a result, the grounds given in the Notice are not reviewable on an application by a landlord for an order of possession pursuant to the unchallenged Notice.

Service of the Notice

On this evidence I find that one month Notice in question was attached to the tenant's door on July 14. By s. 90 of the *RTA* such a notice is "deemed" to have been received three days later, namely July 17.

The use of the work "deemed" in s. 90, does not mean "conclusively deemed." Rather, it raises a rebuttable presumption that the document was received.

In my view, a tenant who demonstrates that she was not mentally competent to manage her own affairs at the time of service due to having been under such heavy medication

as to significantly impair her understanding of day to day things, would have good cause to rebut the presumption of service on that basis.

The evidence presented in this case does not satisfy me that the tenant was operating under such a disability. Her July 3 messaging shows a person aware of her surroundings: she was being moved between hospitals and asks the landlord to put a parcel in a particular place in her rental unit. Her July 14 messaging reference to the accountant's February error shows that she had received the one month Notice claiming February rent had been late and had understood the Notice. It shows she was aware enough to refer to the RTB, her rights and the fact that she intended to make a rent payment six days hence.

The evidence satisfies me the tenant was competent to manage her affairs on July 14 and there is no basis to suspect her competency left her by July 20 when she signed the agreement specifically acknowledging that the one month Notice was still in effect, subject to any challenge she might make.

As a result, I find that the Notice, unchallenged by any application by the tenant, has had the effect of ending this tenancy on August 31, 2020. The landlord is entitled to an order of possession.

Rent

The evidence submitted shows on a balance of probabilities that the tenant failed to pay the August rent of \$745.00. I award that amount to the landlord, plus recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord's claim is allowed. He will have an immediate order of possession and a monetary order against the tenant in the amount of \$845.00 as claimed.

The August 2020 rent of \$745.00 is "affected rent" under the CoVid-19 rules instituted by the RTB. The landlord is not entitled to pursue the tenant for that money before going through the process of giving the tenant a rent repayment plan (RRP) in the form directed by the Branch.

I refer the parties to the Residential Tenancy Branch website <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#RRP> in that regard and recommend to them that they contact the information officers at the Branch for further detail or direction.

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 23, 2020

Residential Tenancy Branch