



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FFT

Introduction

On August 7, 2020, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause (the “Notice”) issued on August 7, 2020, and to recover the filing fee for this application. The matter was set for a conference call.

One of the Tenants, the Tenant’s Advocate (the “Tenant”) and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – Late Evidence

At the outset of the hearing, the Tenant advised this Arbitrator that the Landlord had submitted a second evidence package to them three days before the hearing.

The Landlord testified that they did submit a second evidence package to the Tenant and to the Residential Tenancy Branch on September 14, 2020, four days before the date of this hearing.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure states the following:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

As the Landlord's second evidence package was not received by the Tenant before the seven-day evidence submission cut off date, I find that it would be procedurally unfair to the Tenant to consider this evidence in my decision.

Therefore, I will not consider any evidence submitted into these proceedings, by the respondent, after September 11, 2020.

Preliminary Matters – Related Issues

I have reviewed the application that I have before me, and I note that the Tenant has applied to cancel a Notice to end tenancy as well as several other issues. I find that some of these other issues are not related to the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenant's claim for an order to repair the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the Notice and to recover the filing fee for this hearing.

Issues to be Decided

- Should the Notice issued on August 7, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Notice shows that the Landlord served the Notice to end tenancy to the Tenants on April 7, 2020, by personal service; however, the Landlord testified that they had posted the notice to the front door of the rental unit. The Landlord submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*

The Notice states that the Tenants must move out of the rental unit by September 1, 2020. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenants that if an application to dispute

the Notice is not filed within 10 days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Notice was issued due to the volume and content of text messages they had been receiving from the Tenants, they found the content of the text messages to construe harassment and threats. The Landlord submitted 17 pages of text message dated between July 31, 2020, to August 2, 2020, as well as one-page dated January 20, 2020, into documentary evidence.

The Landlord testified that in January 2020, they had attended the rental unit to make some needed repairs, but that when they attended, the Tenant yelled at them. The Landlord testified that they had asked the Tenant to stop yelling at them, but that the Tenant continued to yell at them the entire time they were in the rental unit.

The Landlord testified that the Tenants sent them an apology text message the following day.

The Landlord testified that around July 28, 2020, the Tenants advised them that the fridge in the rental unit stopped working. The Landlord testified that they attended the rental unit right away to fix the fridge but that they had been unable to repair the fridge until August 2, 2020.

The Landlord testified that the Tenants harassed and threatened them through text messages sent between July 31, 2020, to August 2, 2020. The Landlord testified that due to what was said in these text messages, they are no longer comfortable going into the rental unit while these Tenants are living there and that due to this uncomfortableness attending the rental unit, they are no longer able to make repairs or maintain the property are required. Additionally, the Landlord testified that if there was an emergency in the rental unit, they would be too uncomfortable to enter the unit, so now their property is at significant risk due to the Tenants' actions of sending these text messages to them.

The Tenant testified that the landlord has a history of either refusing to make required repairs to the rental unit or taking a very long time to complete a repair. The Tenant also testified that they had been asking for several months for the landlord to repair the lock on the back door that no longer worked but that the Landlord had refused.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants received the Notice to End Tenancy on August 7, 2020. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) 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.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenants had until August 17, 2020, 2018, to file their application to dispute this Notice. I have reviewed the Tenants' application for dispute resolution, and I find that the Tenants filed her application on August 7, 2020, within the legislated timeline.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case, and I find that there is insufficient evidence to support the Landlord's Notice.

I acknowledge the 18 pages of text messages submitted into evidence by the Landlord; however, after reviewing these text messages, I find that the content of these messages to be insufficient grounds to end this tenancy.

Consequently, I find that the Landlord has not proven sufficient cause to satisfy me, to terminate the tenancy for any of the reasons indicated on the Notice they issued. Therefore, I grant the Tenants' application to cancel the Notice dated August 7, 2020, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. The Tenants are granted permission to take a one-time deduction of \$100.00 from their next month's rent in full satisfaction of this award.

Conclusion

The Tenants' application to cancel the Notice, dated August 7, 2020, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenants permission to take a one-time deduction of \$100.00 from their next month's rent.

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 18, 2020

Residential Tenancy Branch