



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, FFL**
 CNC-MT, FFT

Introduction

This hearing dealt with crossed applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (“Act”).

The landlord applied for:

- An Order of Possession for Cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- More time to file an application to dispute a notice to end tenancy pursuant to section 66; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing and was represented by an agent, JD (“landlord”).

The tenant attended the hearing and was represented by counsel, JM. Both parties acknowledged being served with one another’s Applications for Dispute Resolution and stated they had no concerns with timely service of documents.

Preliminary Issue – tenant’s application seeking more time to dispute the notice to end tenancy

At the commencement of the hearing, tenant’s counsel presented submissions regarding the above issue. Counsel acknowledged her client was served with the One Month Notice To End Tenancy for Cause on August 15, 2020 when it was posted to the

tenant's door. On September 25th, counsel filed the tenant's Application for Dispute Resolution, the subject of today's application.

Counsel submits that when the tenant received the notice to end tenancy, the tenant filed an Application for Dispute Resolution seeking repairs on August 24th. The file number for the tenant's other file is noted on the cover page of this decision. In this application, the tenant sought repairs to the rental unit but either neglected to, forgot or overlooked seeking an order to cancel the notice to end tenancy. The tenant's repair application was heard in September 2020 and a decision was rendered.

Counsel submits that I ought to grant the application to extend the time to dispute the notice to end tenancy for the following reasons:

1. The notice to end tenancy is defective. The effective date stated on the landlord's notice to end tenancy, served in mid-August, is September 15, 2020. Rent is due on the first of the month, so in order for the landlord's notice to be valid, the effective date should have stated September 30, 2020 to be compliant with section 47 of the Act.
2. In the alternative, the tenant ought to be able to amend his first Application for Dispute Resolution filed back on August 24th to now dispute the notice to end tenancy as well as the original relief sought, repairs. The tenant always intended on disputing the notice to end tenancy. Tenant's counsel submits that the evidence supplied in the previous Application for Dispute Resolution supports a dispute of the notice and that the application was simply incorrectly completed. Counsel relies on rule 4.2 of the Residential Tenancy Branch Rules of Procedure and Residential Tenancy Policy Guideline PG-23, part G for my authority to amend the original application for repairs.

The landlord submits that the tenant's original repair application was attended by both parties, heard by an arbitrator and a decision was made. She submits that she's not sure that I can amend an application a completed file. She understands the application was originally incorrectly filed but states she is still seeking an end to the tenancy because there is too much disagreement between the parties.

Analysis

Although the notice to end tenancy does not state an effective date that complies with section 47 of the Act, section 53 of the Residential Tenancy Act automatically changes the notice so that September 15th (the date stated on the notice that is earlier than the earliest date permitted under section 47) is automatically changed to September 30th. (the earliest date that complies with section 47). Section 53 is reprinted below.

Incorrect effective dates automatically changed

53 (1) *If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.*

(2) *If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.*

(3) *In the case of a notice to end a tenancy, other than a notice under section 45*

(3) [tenant's notice: landlord breach of material term], 46 [landlord's notice: non-payment of rent] or 50 [tenant may end tenancy early], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

As the effective date changes by virtue of section 53 of the Act, I find the tenant's first argument that the ineffective date invalidates the notice to be a non-issue. The notice is not cancelled based on the first argument.

The tenant's second argument involves the tenant's understanding of rule 4.2 of the Residential Tenancy Branch Rules of Procedure and part G of Residential Tenancy Policy Guideline PG-23, both reprinted below:

Rule 4.2

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

G. RELATED CLAIMS

Matters identified on an application for dispute resolution must be related, in accordance with rule 2.3 (Related issues).

Examples of related claims include:

- *an order of possession for unpaid rent and a monetary order for the unpaid rent; or*
- *an order for repairs and reduced rent because the tenant could not use all aspects of the rental unit; or*
- *cancellation of a notice to end tenancy for cause and a request for repairs, when there is evidence that the notice to end tenancy for cause was issued because the tenant unreasonably disturbed the landlord, and the notice was issued after the tenant made many requests for repairs.*

Counsel for the tenant acknowledged the tenant made an inadvertent error when filing his first Application for Dispute Resolution seeking repairs. I note from the copy of the tenant's original Notice of Dispute Resolution Proceedings provided as evidence by the tenant, that the tenant's first application sought an order for emergency repairs under section 33 of the Act, not regular repairs under sections 32 and 62. An application for emergency repairs is a special type of application given an Expedited Hearing and is governed by rule 10 of the Residential Tenancy Branch Rules since the nature of the relief requires an expedited hearing, earlier than would normally be required for regular repairs.

Rule 10.7 of the rules states:

10.7 Amending an application for an expedited hearing

An application for an expedited hearing may only be amended at the hearing. Requests to amend an application made prior to the hearing will be denied.

This is further explored in PG-51 [Expedited Hearings]:

Amending an Application for an Expedited Hearing

Except where required in the circumstances, an expedited hearing is not a way to bypass normal service and response time limits to get a quicker hearing. Therefore, once an application for an expedited hearing is made, it cannot be amended except at the hearing with the permission of the arbitrator. This is to prevent applicants from "queue jumping", for example, by applying for emergency repairs and then amending the application to request repairs for the replacement of a fridge or oven which is not considered an emergency. Another example is applying for an early end to the tenancy and then attempting to amend the application for an order of possession for unpaid rent and a monetary order for unpaid rent. These types of applications are not appropriate for the expedited hearing process.

At an expedited hearing, an attempt to amend an expedited hearing application from a request for emergency repairs to regular repairs or from an early end to tenancy to a

request for an order of possession for unpaid rent will almost always result in the arbitrator dismissing the application and the applicant having to start the application process over from the beginning.

The tenant's opportunity to amend his original application for emergency repairs would have been at the hearing before the original arbitrator. I find an application seeking to amend the original emergency repair application to now include a dispute to a notice to end tenancy at a subsequent hearing to be out of line with rule 10.7 of the Rules of Procedure. The fact that the original application has a final and binding decision rendered further confounds the tenant's application to now seek an amendment to the original application. Based on these finding, I decline to exercise my authority to amend the tenant's original application for emergency repairs under rule 4.2 to now include an application to dispute the notice to end tenancy.

Turning next to the applications before me. The tenant acknowledges in his application that he received the One Month Notice To End Tenancy for Cause on August 15th when it was posted to his door. In accordance with sections 88 and 90 of the Act, the notice is deemed received three days after it was posted, on August 18, 2020. The tenant filed his application to dispute the notice on September 25th, 2020, more than 30 days after the notice is deemed served.

Sections 47(4) and (5) of the Act state:

(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.

The tenant did not provide sufficient evidence of any exceptional circumstances preventing him from disputing the notice to end tenancy within 10 days after receiving it. The tenant did not file a subsequent application to dispute the notice to end tenancy after the filing of the erroneous application for emergency repairs even though the window of time to do so was still open. Pursuant to section 47(5)(a), I find the tenant is conclusively presumed to have accepted the tenancy ended on the earliest date the tenancy could have ended in accordance with section 53 of the Act, September 30, 2020. As that date has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

The tenant was not successful in his application and the filing fee will not be recovered.

The landlord was successful in her claim and I award the landlord the filing fee of \$100.00. In accordance with the offsetting provisions of section 72 of the Act, the landlord is entitled to retain \$100.00 of the tenant's security deposit at the end of the tenancy.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 26, 2020

Residential Tenancy Branch