



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, CNL, FFT, MNDCT, OLC, OPT, PSF

Introduction

The tenant seeks an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"). In addition, the tenant sought relief under sections 30, 54, 62, 67, 70, and 72 of the Act.

The tenant filed an application for dispute resolution on September 17, 2020 and a hearing was held on November 10, 2020. Only the tenant attended the hearing, and I gave her a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. The landlord did not attend the hearing, which lasted 22 minutes.

The Residential Tenancy Branch ("RTB") emailed the Notice of Dispute Resolution Proceeding to the tenant on September 23, 2020. However, the tenant does not have a computer or ready access to a printer, so she visited the local ServiceBC office on at least three occasions in an effort to personally pick up a copy of the Notice of Dispute Resolution Proceeding. Finally, she was able to obtain a copy on October 9, 2020 and she mailed a copy of the Notice of Dispute Resolution Proceeding to the landlord by way of Canada Post Registered Mail on October 12, 2020. She testified that the landlord received the Notice of Dispute Resolution Proceeding and in fact he showed up at the rental unit on October 31, 2020.

Based on the above-noted and undisputed evidence I find that the landlord was served with the Notice of Dispute Resolution Proceeding. While the Notice of Dispute Resolution Proceeding may not have been served within the strict timelines of the Act or the *Rules of Procedure*, pursuant to Rule 9.1 of the *Rules of Procedure*, "Failure to comply with these Rules of Procedure will not itself stop or nullify a proceeding, a step taken, or any decision or order made in the proceeding." Moreover, it cannot be overlooked that the tenant made diligent attempts to obtain the Notice of Dispute Resolution Proceeding by visiting the ServiceBC on frequent occasions in an effort to meet the requirements of which she was aware.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenants' application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue. As such, and as explained to the tenant, I would only be considering the (1) dispute of the Notice, (2) application for an order under section 62 of the Act, and (3) application for recovery of the filing fee. The remainder of the claims are dismissed with leave to reapply. The tenant remains at liberty to reapply for those claims at a later date if she so wishes.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order under section 62 of the Act?
3. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is reproduced below.

Regarding the Notice, a copy of it was submitted into evidence. The tenant testified that she disputes that the Notice was issued in good faith. The Notice was served on the tenant by being posted on the door on September 3, 2020.

Regarding her request for an order under section 62 of the Act, the tenant testified that the landlord has sent numerous texts and made numerous phone calls to her for many reasons. As noted in her written submission, the tenant "felt threatened, badgered, harassed and overwhelmed as a result of the total of 52 text messages and/or phone calls to me over this time period." The tenant would like an order that the landlord limit all communication in writing to her.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. As the landlord failed to attend the hearing, any ground under which the Notice was issued has not been proven. Accordingly, I cancel the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (erroneously signed by the landlord on October 30, 2020, and purportedly served on August 28, 2020, which it was not). The tenancy shall continue until it is ended in accordance, and in compliance, with the Act.

In respect of the tenant's application for an order under section 62 of the Act, section 62(3) of the Act states that

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment.

In respect of this dispute and based on the tenant's testimony, I find that the landlord's conduct and excessive communication breaches the tenant's right to quiet enjoyment. As such, and pursuant to section 62 of the Act, I hereby order that the landlord may only communicate with the tenant in writing, that any such communication be made solely for the purpose of meeting the landlord's obligations under the Act, and, that any such communication be restricted to the minimal amount necessary to give effect to those obligations. Repetitive, excessive, and any unnecessary communication is prohibited.

Finally, should the landlord breach this order the tenant may file an application for dispute resolution claiming against the landlord for compensation.

In respect of the tenant's application for recovery of the filing fee, I hereby order that pursuant to section 72 of the Act, the tenant may make a one-time deduction of \$100.00 in a future rent payment in full satisfaction of this award.

Conclusion

I hereby grant the tenant's application.

I hereby cancel the Two Month Notice to End Tenancy for Landlord's Use of Property. The Notice is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 10, 2020

Residential Tenancy Branch