



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, OLC, MNDCT, RR, AAT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on December 15, 2020. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's application, and evidence. The Tenant confirmed receipt of the Landlord's evidence. Neither party took issue with the service of these documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agree that the Tenant moved into the rental unit around 13 years ago and no written tenancy agreement was ever signed. The Tenant stated that at the time he moved into the rental unit, rent was around \$700.00 per month (as it was listed on the ad), but he made an agreement with the Landlord to perform work around the property and the house in exchange for rent. The Tenant stated he renovated his unit, and part of the upper unit for the first couple months of the tenancy, then he took on a caretaker role, where he would do general maintenance, and yard work in exchange for free accommodation.

This arrangement went on for nearly 12 years, then the relationship became strained in the summer of 2020, when the Landlord asked for some renovation work to be done. The Landlord stated that the work was not done by the Tenant, despite the fact they had an agreement where he would do all of this type of work. As such, the Landlord stated they had to hire out to a third party to have the repairs and renovations done.

The Tenant acknowledged receiving the 1-Month Notice to End Tenancy for Cause (the Notice) on September 20, 2020. However, he did not provide a copy of this Notice. The Landlord was asked to explain why the Notice was issued, and he stated that since the Tenant refused to do the renovations that were asked of him in the summer of 2020, then he is effectively no longer paying rent. The Landlord also stated the Tenant is trafficking illegal cigarettes. The Landlord provided some evidence speaking to some of the issues, and provided a copy of the first page of the Notice (as it was posted on the

door of the rental unit). However, the Landlord did not present a complete copy of the Notice, nor did he explain which actual grounds were selected on the Notice itself.

Analysis

Generally, I note that when a Tenant files to dispute a Notice, the Landlord bears the burden of proof to substantiate that the reason behind the Notice is valid. However, I also note the following Rule of Procedure:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- *a detailed calculation of any monetary claim being made;*
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

In this case, there is an onus on the Tenant to file his application correctly, and include the necessary documents. Then, once an application is properly completed with the required documents, the Landlord has the onus to establish the basis for the Notice, and that it meets the form and content requirements under the *Act*. As laid out below, I find neither party fulfilled the requirements incumbent upon them.

I note the Tenant and applicant failed to submit a copy of the Notice, as required by Rule 2.5, without any explanation as to why this was not done, or could not be done.

Further, the Landlord only submitted the first page of the Notice, and did not explain which grounds were selected on the second page of that Notice. He only spoke to a few generalized reasons why the tenancy should end. Not only has the Tenant failed to submit the required documents for this hearing, the Landlord also failed to provide a

copy such that I could be satisfied the Notice meets the form and content requirements under section 52 of the Act.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

As stated above, I have only one page of the Notice, and minimal testimony speaking to what grounds the Notice was based upon. Given the Tenant failed to submit the required documents, I dismiss his application to cancel the Notice issued on September 20, 2020, without leave.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

However, given neither party submitted a complete copy of the Notice, I find there is insufficient evidence to show that the Notice complies with the requirements of form and content. As such, I decline to issue an order of possession under section 55. I hereby cancel the Notice, issued September 20, 2020, as there is insufficient evidence it complies with section 52 of the Act.

Since the Tenant's application was dismissed, I decline to award the recovery of the filing fee.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the Notice is dismissed, but no order of possession will be issued. The Notice issued on September 20, 2020 is hereby cancelled and of no force or effect.

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: December 16, 2020