Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RWT HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, FFL**

CNR-MT, FFT, CNC, LRE, OLC

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with applications filed by the landlord and the tenant pursuant to the Residential Tenancy *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 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- A request for more time to cancel a Notice to End Tenancy pursuant to section 66
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

Both tenants attended the hearing and the landlord was represented at the hearing by property managers, TT and JT. As both parties were present, service of documents was confirmed. The tenants acknowledged service of the landlord's Application for Dispute Resolution and evidence; the landlord acknowledged service of the same. The tenant had no issues with timely service of documents however the landlord stated he received the tenant's evidence 13 days before the hearing instead of 14 days as required by the rules. Despite this, the landlord acknowledged he had the opportunity to review the tenant's evidence and that he was prepared to proceed with the hearing.

Preliminary Issue – late filing of Application for Dispute Resolution

The tenants filed his Application for Dispute Resolution on November 6, 2020. The landlord testified that they sent the notice to end tenancy by registered mail to the residential address of the tenants on October 8, 2020. The tracking number for the mailing is recorded on the cover page of this decision.

The tenants submit that their rental unit is the upper unit of a single family home comprising of an upper and lower unit. Each set of tenants shares the same mailbox, a Canada Post "superbox" and each set of tenants has their own key to the box. The tenant testified that they lent their key to the mailbox to the lower unit tenant who misplaced hers. Then, that lower unit tenant abandoned her unit, taking their only mailbox key with her. The tenants were unable to check the mailbox and were therefore unaware that the landlord had served them with a notice to end tenancy. It wasn't until the landlord emailed them on November 2nd to tell them their time to dispute had passed and they had to move out.

The tenant testified that he tried to get another key to the mailbox but that Canada Post wouldn't provide them with one. According to the tenant, Canada Post told the tenant that the landlord had to supply them with another key to the mailbox.

The landlord JT testified that the one of the two lower unit tenants left in late August and the remaining tenant gave notice that she would be leaving at the end of September. The landlords live in another city, but that when they were in town on September 27th, the landlord spoke to the tenant JZ who told them she lent her key to one of the lower unit tenants who had left. The landlord told JZ that, as a landlord, she cannot request another key for the rented unit. The tenant had to go to the post office with a utility bill, a driver's license or something to prove to the postmaster that she lived there. At that point, the tenant could ask for another key. During the

hearing, the tenants acknowledged that the landlord's recollection as stated above was accurate.

Upon arriving home, the landlords saw that they did have another key to the mailbox and that the landlord could open the mailbox on October 1st when they were in town. The landlord did not give the tenants their only key, but opened the mailbox for the tenants while in town since the tenant had been without a key since August and hadn't retrieved any mail since then.

The landlord tried to get another key to the rental unit after speaking with the tenants, but Canada Post confirmed they still cannot provide the landlord with another key. The final communication the landlord had with the tenants was on November 19th where the tenant CR tells the landlord that he will request another key and see what happens.

During the hearing, the parties discussed the events leading up to the issuance of the notice, namely the landlord's attendances at the rental unit on October 1 and 3, the multiple emails sent between October 1st and October 8th and the landlord's attempt to have the tenants acknowledge the violations of the tenancy agreement. The email communications were provided as evidence by the tenant.

Analysis

A notice to end tenancy must be served in accordance with section 88 of the *Act*. The landlord testified he served his notice to end tenancy in accordance with section 88(c): *if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant.*

While the landlords had the right to serve the tenants by registered mail, I note that they were aware that the tenants were unable to access their own mailbox. This knowledge persisted as late as October 1st, when the landlord opened the mailbox for the tenants. I have considered that the landlords do not live in the same city as the tenants and due to this, serving the notice to end tenancy by posting to the tenants' door or personal service is impractical.

Despite this, I must turn to the tenants' own responsibility. After giving their only key to the lower unit tenant, they never sought to retrieve it from her before she moved out. Second, the tenants did not provide any documentary evidence to support their claim that Canada Post would not provide them with another key to the mailbox. No communication from Canada post or material to support their submission that the key

would only be provided to the landlord. On a balance of probabilities, I find the landlord's version, that Canada Post would not provide a key to the mailbox used exclusively by tenants to the landlord to be both plausible and reasonable on the part of the postmaster. I find the tenants' version that Canada Post would not supply them with another key to be the less likely version of events to be true.

Next, both parties provided testimony regarding the landlord's disappointment regarding what he saw on his visits between October 1 and October 3. The email exchanges and text messages sent afterward clearly indicate the landlord felt the tenants were breaching material terms of the tenancy agreement. Both parties provided copies of the communication.

Based on the mutual communication, I find the tenant was in a position where the probability that the landlord would issue a One Month Notice To End Tenancy for Cause was high. I am satisfied the tenant ought to have been expecting the landlord to serve him with the Notice immediately after the landlord pointed out the breaches to the tenancy agreement to him in his communications.

Residential Tenancy Branch Policy Guideline PG-12 [Service Provisions] states:

> *Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*
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> *In the event of disagreement between the parties about the date a document was served and the date it was received, an arbitrator may hear evidence from both parties and make a finding of when service was effected.*
>
> *The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done. For example, the Supreme Court found in* Hughes v. Pavlovic, 2011 BCSC 990 *that the deeming provisions ought not to apply in that case because Canada Post was on strike, therefore unable to deliver Registered Mail.*
>
> *…*
>
> *The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.*

The evidence before me points to the tenants having the knowledge that the landlord clearly felt they were breaching terms of the tenancy agreement right around the time the Notice was sent to them via registered mail. The fact that the tenants did not have a key to the mailbox cannot be considered a mitigating factor in not picking up their mail since the only evidence I have before me that they tried to get another key is the testimony of the tenant. No communication from Canada Post denying them the ability to get another key was entered into evidence, nor was the existence of such communication brought forth. I find the tenants had the responsibility to actively try to get a key from the post office during the critical time when they ought to have expected the landlord to serve them with a notice to end tenancy. The evidence does not support any indication that they did.

I deem the landlord's One Month Notice To End Tenancy for Cause to be served on the tenants on October 13, 2020, five days after it was sent by registered mail pursuant to sections 88 and 90 of the *Act*.

Section 47(4) states: 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. Pursuant to section 47(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.

I find the tenants did not apply to dispute the notice within 10 days after receiving the notice and are conclusively presumed to have accepted the tenancy ends on the effective date of the notice. In this case, the effective date of November 30, 2020 has passed, and the landlord is entitled to an order of possession effective 2 days after service.

As this tenancy is ending, the remainder of the tenant's application is dismissed without leave to reapply.

The landlord's application was successful, and the landlord is awarded the $100.00 filing fee pursuant to section 72 of the *Act*. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain $100.00 of the tenants' security deposit in full satisfaction of the monetary order.

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 in the Supreme Court of British Columbia.

The landlord is to retain $100.00 of the tenants' security deposit in accordance with section 72 of the Act.

This decision final and binding and 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: January 26, 2021

Residential Tenancy Branch