



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- more time to make an application to cancel the Notice pursuant to section 66.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:19 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's property manager ("**BP**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that BP and I were the only ones who had called into this teleconference.

BP testified that the landlord served the tenant with its evidence package in person on February 18, 2021 and by registered mail on February 17, 2021. He provided a "proof of the hearing notice / evidence delivery" form signed by the tenant and by an agent of the landlord confirming the personal service and a Canada Post tracking number (reproduced on the cover of this decision) confirming the mailing. I find that the tenant has been served with the landlord's evidence package in accordance with the Act.

Preliminary Issue – Name of Landlord

The tenant listed BP as the landlord on the application. However, the tenancy agreement and Notice identify the landlord as a corporation ("**MEC**"). BP testified that he is the property manager for the residential property, and not the landlord.

Accordingly, I order that the application be amended to remove BP as a respondent to this application and replace him with MEC as respondent.

Preliminary Issue – Tenant's Failure to Attend

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord bears the onus to prove that the Notice was issued for validly. The tenant's non-attendance does not change this.

However, the tenant bears the onus to show that she is entitled to more time within which to dispute the Notice and that she is entitled to receive a rent reduction. As the tenant failed to attend the hearing, she is unable to discharge her evidentiary burden to prove that she is entitled to these two orders sought. Pursuant to Rule of Procedure 7.4, she (or her agent) must attend the hearing and present her evidence for it to be considered. This did not occur and I have not considered any of the documentary evidence submitted by the tenant to the Residential Tenancy Branch in advance of the hearing.

As such, I dismiss the tenant's application for more time within which to dispute the Notice and for a rent reduction, without leave to reapply.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of BP, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord and the prior occupant of the rental unit entered into the tenancy agreement starting January 1, 2012. The tenant was added as a party to the tenancy

agreement on February 22, 2019. The prior occupant was removed from the tenancy agreement on July 31, 2019. Monthly rent is currently \$1,070. At the start of the tenancy, the landlord collected a \$450 security deposit from the prior occupant. The landlord continues to hold this deposit in trust for the tenant.

On November 10, 2020, the landlord served the Notice on the tenant by posting it to the door of the rental unit. It specified an effective date of December 31, 2020. The Notice stated the grounds for ending the tenancy as follows:

- 1) Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- 2) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after the written notice to do so.

In the section of the Notice labeled "details for cause", the landlord wrote:

Tenant failed to report leak causing flood in bathrooms of 2nd and 1st floor units two separate times dash on July 9, 2020 and November 7, 2020. Tenant alter refused entry during emergency circumstances to landlord and police. This constitutes breach of clauses 13 and 20 of tenancy agreement as well as section 29(1)(f) of the Residential Tenancy Act.

The landlord provided a signed and witnessed proof of service form confirming that the Notice was served on November 10, 2020.

The tenant filed an application to dispute the Notice on December 7, 2020.

BP testified that, on July 9, 2020, the toilet overflowed in the rental unit and caused water to leak into the two units below. The landlord submitted into evidence a warning letter issued to the tenant regarding this matter dated July 9, 2020 as well as copies of work orders from contractors repairing the damage to the unit below and for attending the rental unit.

BP testified that on November 7, 2020, the unit below the rental unit reported water leaking into her unit from above. He testified that the landlord's weekend manager attended the rental unit and attempted to enter it to fix the leak, but that the tenant refused him entry. He testified that the RCMP attended the rental unit as well that night and that the tenant also refused them entry.

BP testified that due to this inability to enter the rental unit the damage caused to the unit below was likely much greater than it otherwise would have been had they been able to enter the rental unit on November 7, 2020 to address the leak. As the landlord was not able to enter the rental unit on November 7, 2020, BP testified that he is unable to state the cause of the leak that day.

BP argued that the landlord was entitled to enter the rental unit on November 7, 2020 even though it did not give advance notice of entry, as the leak represented an “emergency” and that the entry was necessary to protect the landlords property. He argued that such entry was permitted by section 29(1)(f) of the Act.

Analysis

Based on BP’s testimony and the proof of service form entered into evidence, I find that the Notice was posted on the door of the rental unit on November 10, 2020. Per section 90 of the Act, the Notice is deemed to have been served three days later. Accordingly, I find that the tenant is deemed served with the Notice on November 13, 2020.

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

Landlord's notice: cause

(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 dispute the Notice within 10 days (that is, by November 23, 2020). Rather, she filed her dispute on December 7, 2020, 24 days after having been served with the Notice.

The tenant is therefore conclusively presumed to have accepted that the tenancy ended on December 31, 2020 (the effective date of the Notice). As such, there is no need for me to examine the underlying reasons for the reason the Notice was issued. The tenant failed to dispute the Notice within the required time period and failed to discharge her evidentiary burden to show that she was entitled to an extension of time within which to dispute it (see above). These two factors are conclusive and cannot be avoided by a meritorious argument regarding the facts underpinning the Notice.

Accordingly, I dismiss the tenant’s application, without leave to reapply. The Notice is valid.

Section 55 of the Act states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the form of the Notice complies with section 52 of the Act. The Notice discloses a valid basis to end the tenancy and the Notice is correctly filled in.

The language of section 55 is mandatory. As such, I grant the landlord an order of possession effective March 31, 2021 at 1:00 pm (as BP testified that the landlord has accepted March rent from the tenant already, for use and occupancy only).

Conclusion

The tenant's application is dismissed, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by March 31, 2021 at 1:00 pm.

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: March 2, 2021

Residential Tenancy Branch