



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

There were other issues identified on the tenant's application, however at the outset of the hearing, the tenant's advocate advised that he did not wish to pursue them. The landlord was not opposed to this and I dismissed the tenant's other issues without leave to reapply.

The tenant attended the hearing with his advocate, LH. The landlord was represented at the hearing by property manager, MC. The landlord acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings and stated he had no issues with timely service of documents.

Preliminary Issue

The landlord uploaded three pieces of evidence for this hearing: a copy of the tenancy agreement, a copy of the notice to end tenancy and a proof of service document. The landlord acknowledges he did not provide those documents to the tenant within the 7-day timeframe as required by Rule 3 of the Residential Tenancy Branch Rules of Procedure ("rules"). The tenant acknowledges he has a copy of the notice to end tenancy and that he was given a copy of the tenancy agreement at the commencement of the tenancy. I admitted those two pieces of the landlord's evidence however the proof of service document was not admitted as evidence since it was not exchanged in compliance with the Rules.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on January 1, 2015. Rent was originally set at \$783.00 per month but is currently \$667.00 per month as the tenant pays non-market rates. Rent is to be paid on or before the first day of the month according to the tenancy agreement.

On January 29, 2021 at 5:35 p.m., the landlord MC personally served the tenant with the One Month Notice to End Tenancy for Cause. The service of the notice to end tenancy was witnessed by property manager, BP who verified the same when called to testify.

An unsigned copy of the notice to end tenancy was provided as evidence. The landlord testified that the original notice served on the tenant was signed. The notice to end tenancy is dated January 29, 2021 and provides an effective date of February 28, 2021. The reason for ending the tenancy states: *the tenant is repeatedly late paying rent*. Under "details of cause", the landlord writes:

Details of the Event(s):

The tenants rent contribution is due on or before the 1st of each month.

However was received on:

October 14.2020

September 03.2020

August 05.2020

July 09.2020

June 09.2020

May 07.2020

The landlord testified that when the tenant pays by cheque, the finance department stamps the cheque as received and a photocopy of the cheque is made. The cheque is

logged in a logbook. The landlord acknowledges he didn't provide a copy of the cheques or the logbook into evidence for this hearing. The landlord testified he accepts that the failure to provide this evidence was an oversight on his part.

The tenant gave the following testimony. He doesn't remember when the notice to end tenancy was served upon him but acknowledges his Application for Dispute Resolution states it was served on January 29th. He denies the landlord personally served him, saying that it was posted to his door.

The tenant denies the landlord's allegation that he paid rent late, stating the he goes to the bank near the end of each month to get a money order which he gives to the landlord. As proof, the tenant provided 63 pages of transactions from his bank account with the dates of transactions for purchasing the money orders highlighted.

The tenant's advocate also argues that the landlord's notice to end tenancy was issued for late payment of "affected rent" or rent that was to be collected during the March 18 and August 17, 2020 COVID-19 pandemic state of emergency. In accordance with Residential Tenancy Branch Policy Guideline PG-52, a One Month Notice to End Tenancy for Cause issued in relation to affected rent is of no effect.

Analysis

The parties disagree on how the tenant was served, whether it was personal service or by posting the tenant's door. If I accept it was personally served on January 29, 2021 as argued by the landlord, the latest time the tenant could have filed his application to dispute the notice would be February 8, 2021, or ten days later. Regardless, the tenant filed his application to dispute the landlord's notice on February 5, 2021, less than 10 days after receiving it. I find the tenant was duly served with the landlord's One Month Notice to End Tenancy for Cause on January 29th in accordance with sections 88 and 90 of the Act and filed his application to dispute it within the 10 days as required under section 47.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state that the onus to prove their case is upon the landlord when a tenant applies to cancel a notice to end tenancy. In this case, the landlord seeks end the tenancy because the tenant was late in paying rent between May and July 2020. The landlord did not provide any documentary evidence to support this claim, only his oral testimony. In contrast, the tenant provided multiple pages of bank statements to satisfy me rent was being paid to the landlord on or before the first day of each month. I find the landlord has provided

insufficient evidence to prove to me that on a balance of probabilities, his version is the one to be preferred. For this reason, the landlord's notice to end tenancy is of no effect.

Second, the tenant's advocate rightly points out that there are restrictions on ending tenancies for affected rent, or rent due between March 18, 2020 and August 17, 2020 as stated in Residential Tenancy Branch Policy Guideline PG-52. Specifically, part D of the Guideline states:

D. NOTICES TO END TENANCY FOR CAUSE

The C19 Tenancy Regulation provides that a landlord must not give a tenant a One Month Notice to End Tenancy for Cause under section 47 of the RTA or section 40 of the MHTPA in respect of a reason that relates to affected rent being unpaid, including one or more of the following reasons:

- *One or more payments of the affected rent are late. For example, if the tenancy agreement stipulates that rent is due on the first of each month, and the tenant paid their rent late for the months of April, May, June and July 2020, the landlord cannot end the tenancy for late payment of rent during those months.*

A One Month Notice to End Tenancy that is given for one of these reasons or otherwise is related to affected rent being unpaid is of no effect. An Order of Possession will not be granted to a landlord in these circumstances. (emphasis added)

The landlord's notice to end tenancy was issued for late payments of rent in May, June and July of 2020, making those months ineligible for the landlord to use as instances of late payment. As they were included in the landlord's One Month Notice to End Tenancy for Cause, the notice is of no effect.

Conclusion

The landlord's One Month Notice to End Tenancy for Cause issued January 29, 2021 is cancelled and of no effect. The tenancy shall continue until it is ended in accordance with the Act.

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: May 07, 2021