



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, CNR-MT, OLC, LRE

Introduction

This hearing dealt with two applications filed by the tenant that were joined together and set to be heard at the same time. The tenant filed to dispute a One Month Notice to End Tenancy for Cause dated March 30, 2021; and, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 7, 2021 including a request for a filing extension. The tenant also requested orders for the landlord to comply with the Act, regulations, or tenancy agreement and to suspend or set conditions on the landlords right to enter the rental unit.

The tenant and two support workers appeared. The tenant was assisted by support workers who stated the tenant suffers from a brain injury and has limited capacity. The landlord's agent and building manager appeared. The parties were affirmed and the parties were ordered to not make an unofficial recording of the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Amendment of tenant's Application for Dispute Resolution

The parties confirmed to me that after the tenant filed her two applications, the landlord served another 10 Day Notice to End Tenancy for Unpaid Rent on June 2, 2021, and both parties confirmed that intended to have the 10 Day Notice dated June 2, 2021 heard during this proceeding. I amended the tenant's application accordingly.

2. Service of hearing materials

The tenant's support workers testified that the tenant's applications were sent to the landlord via registered mail by a former support worker. The landlord denied receiving the tenant's applications by registered mail. The tenant and/or support workers did not submit any registered mail receipts prior to the hearing, as proof of service, and stated they did not have any registered mail receipts before them.

The tenant's support workers testified the tenant's proceeding documents were also sent to the landlord via email; however, they were uncertain as to when the emails were sent by the former support worker. The landlord's agent was of the position the landlord was not properly served; however, the landlord had provided evidence under both of the tenant's applications. The landlord was also prepared to proceed. Since the landlord was prepared to proceed and was not prejudiced by any improper service upon her considering the landlord had prepared responses, I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

As for service of the landlord's evidence upon the tenant, the landlord's manager testified that she served the landlord's evidence package, which included documentation numbered 1 through 23, on May 20, 2021, in person to the tenant. The landlord's manager testified that she served a warning letter to the tenant's former support worker on June 13, 2021 and another warning letter to the tenant, in person by the elevator, sometime in June 2021 although she was uncertain as to the date.

I noted that the landlord's evidence package included documents dated after May 20, 2021 and I was unsatisfied by the manager's testimony that the landlord's complete evidence package was served as described by the manager. The landlord's agent then stated she had a text message whereby the manager confirmed delivery of documents to the tenant in June 2021, which the landlord's agent read aloud, but I noted that the text message does not adequately specify what was being served and, as stated by the manager, she had been serving other documents such as warning letters in June 2021.

The landlord's agent then stated she sent the evidence package to three of the tenant's support workers via email on June 12, 2021. Only one of the support workers that was alleged served via email was at the hearing and she denied receiving an evidence package by email. The other two support workers alleged served by email were not at the hearing. Given the landlord did not provide any other proof of service, I informed

the landlord's agent I was unsatisfied by the landlord's proof of service, or lack thereof, that the landlord properly served the evidence via email.

Where a party is not in receipt of the other party's evidence, it is often prejudicial to proceed to admit the evidence the other party does not have. As such, evidence that has not been served, or where service has not been proven, is generally excluded to preserve procedural fairness.

I informed the parties that I was willing to proceed to reviewing the Notices to End Tenancy since both parties had a copy of those and take oral testimony. Neither party objected.

3. Landlord's application

The landlord's agent testified that she also filed an Application for Dispute Resolution and she enquired as to why it was not crossed with the two tenant applications before me. Upon review of the file number provided by the landlord (and recorded on the cover page of this decision), I noted that the landlord had filed an Application for Dispute Resolution under the Direct Request procedure with respect to the 10 Day Notice dated May 7, 2021; however, the Adjudicator determined the landlord filed prematurely and dismissed the landlord's Application for Dispute Resolution with leave to reapply. The landlord confirmed to me that she did not make another Application for Dispute Resolution. As such, there was no unresolved landlord's Application for Dispute Resolution to cross with the tenant's applications.

The landlord's agent attempted to complain to me about the information she received from an Information Officer concerning the landlord's Application for Dispute Resolution; however, I did not permit that and I informed the landlord's agent of her right to make a complaint to the Director but that I cannot reopen a case for which a final and binding decision has already been rendered.

I proceeded to inform that parties that despite the landlord's previous Application for Dispute Resolution being dismissed with leave, the 10 Day Notice dated May 7, 2021 is still a disputed notice for me to consider under the tenant's Application for Dispute Resolution and the landlord may still be provided an Order of Possession and Monetary Order for rent under the Act [section 55(1) and (1.1)] where a tenant applies to dispute a notice to end tenancy and the notice is upheld.

4. Tenant's request for extension of time to file to dispute Notice to End Tenancy dated May 7, 2021

The tenant requested an extension of time to file to dispute the 10 Day Notice she received in May 2021. However, the 10 Day Notice issued on May 7, 2021 is an old form, that is not currently approved by the Director. As such, the 10 Day Notice issued on May 7, 2021 was unenforceable under section 52 of the Act and the landlord is not entitled to an Order of Possession under section 55(1) where the notice is invalid. Therefore, I found it unnecessary to further consider a request for extension.

5. Notice to End Tenancy issued on March 30, 2021

The Notice to End Tenancy issued to the tenant by the landlord on March 30, 2021 was also on an old, outdated form that is no longer a form approved by the Director. As provided in section 52 of the Act, to be enforceable, a landlord must use a notice to end tenancy in the approved form. As such, I did not hear the merits for issuance of the One Month Notice on March 30, 2021 as I cannot issue an Order of Possession based on an invalid notice.

6. Other issues

I determined it necessary and appropriate to proceed to resolve the dispute concerning the fate of this tenancy given the 10 Day Notice dated June 2, 2021 and the tenant's desire to continue the tenancy at this point in time. I severed the tenant's request for orders for compliance and orders suspending the landlord's right to enter the rental unit from these applications pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been

included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

I dismiss these other remedies with leave to reapply.

Issue(s) to be Decided

Should the 10 Day Notice issued on June 2, 2021 be upheld or cancelled?

Background and Evidence

The tenancy started on March 3, 2020 and the landlord collected a security deposit of \$275.00. The tenant is required to pay rent of \$550.00 on the first day of every month.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on June 2, 2021 indicating rent of \$560.00 was outstanding as of June 1, 2021.

The landlord explained that the amount of \$560.00 is the sum of the monthly rent of \$550.00 plus a \$10.00 fee for a laundry card that was requested by the tenant after the tenancy started.

The landlord testified that a payment of \$550.00 for June 2021 rent was received in the mail from the Ministry on June 14, 2021. The landlord stated that she submitted a receipt for payment of \$550.00 that is dated June 3, 2021 but stated she needed to explain that the receipt is actually for payment of May 2021 rent. The landlord stated she did not upload a copy of the receipt dated June 14, 2021.

The tenant, through her outreach workers, acknowledged that there were delays in payment for May 2021 and June 2021 because she had not submitted required documentation to the Ministry to ensure on-going benefits. The tenant stated that she thought she cleared up the situation in May 2021 and was surprised to get the 10 Day Notice in June 2021 as she thought June's payment would be made directly and on time by the Ministry. Upon receiving the 10 Day Notice in June 2021 she went to the Service BC office and determined the Ministry had the landlord's rent cheque at their office. The tenant instructed the Ministry to mail it to the landlord. The tenant stated she does not know when the payment was actually received by the landlord since it was sent by the Ministry. I asked the landlord if she still had the envelope the cheque came in and she said she did not.

Both parties provided consistent statements that rent for July 2021 and August 2021 was paid and accepted for use and occupancy only.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

It is unopposed that the tenant was served with a 10 Day Notice on June 2, 2021. The 10 Day Notice dated June 2, 2021 is in the approved form and is duly completed.

When a tenant receives a 10 Day Notice, section 46 of the Act provides that the tenant has five days to pay the outstanding rent or file to dispute it. If a tenant pays the outstanding rent within five days of receiving the 10 Day notice, the 10 Day Notice is nullified.

During the hearing, the landlord testified that payment for the outstanding June 2021 rent was received on June 14, 2021, which is more than five days after the tenant received the 10 Day Notice. During the hearing, I provided the parties with my preliminary findings, orally, that based on the landlord's undisputed testimony, I accepted the payment was received on June 14, 2021. However, this written decision takes precedence over my preliminary oral findings and reflects further examination of the evidence.

The landlord had uploaded a receipt that was dated June 3, 2021 to the Residential Tenancy Branch system. The landlord testified that this receipt was actually for payment of rent outstanding for the month of May 2021. During the hearing, I looked at the receipt without objection of either party. The receipt itself does not specify whether the payment is for May 2021 or June 2021 rent and it only indicates the date the payment is received and that it is for rent. However, I note that in uploading the document, the landlord provided a description that it was a receipt for payment of June 2021 rent. Given the discrepancy between the landlord's testimony and the description provided by the landlord in uploading this document, I proceeded to look at other documents uploaded by the landlord with a view to determining the accuracy of the landlord's testimony under section 75 of the Act:

75 The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

- (a) necessary and appropriate, and
- (b) relevant to the dispute resolution proceeding.

The landlord had uploaded another receipt, dated May 28, 2021, showing payment of \$550.00 [Doc 19]. The receipt itself does not state which month's rent is being paid by this payment; however, in uploading this receipt the landlord described it as being a receipt for payment of May 2021 rent. Since the landlord had testified May's rent was paid on June 3, but there is a receipt dated May 28, 2021, I looked further to determine what was being paid on May 28, 2021. The landlord had provided print-outs of the tenant's ledger and I turned to those. The ledger shows payment of the April 2021 rent on April 10, 2021 and upon receipt of the April 10, 2021 payment there was no outstanding rent. As such, I find the receipt dated May 28, 2021 is most likely for May 2021 rent and the receipt dated June 3, 2021 is most likely for June 2021 rent.

In light of the above, I find the tenant did pay the outstanding rent for June 2021 on June 3, 2021 and this is within five days of receiving the 10 Day Notice meaning the 10 Day Notice dated June 2, 2021 is nullified by payment.

I recognize that the 10 Day Notice dated June 2, 2021 reflects an outstanding rent of \$560.00; however, this is not the correct amount of "rent" outstanding. Where a tenant requests a service after the tenancy commences and the service is not provided as part of the tenancy, the amount charged by the landlord is a "fee" chargeable under section 7 of the Regulations. As provided under section 46 of the Act, a 10 Day Notice is to reflect the amount of outstanding rent or utilities demanded in writing at least 30 days prior, but not fees or other charges. As such, failure to pay a fee is not a basis for ending the tenancy for unpaid rent. Rather, the landlord's recourse for failure to receive a "fee" from the tenant is to terminate that service and/or seek a Monetary Order for the unpaid "fee".

As stated previously under the Preliminary and Procedural Matters section of this decision, I recognize the landlord issued two other notices to end tenancy to the tenant: a One Month Notice to End Tenancy for Cause dated March 30, 2021 and a 10 Day Notice to End Tenancy for Unpaid Rent dated May 7, 2021. In order to enforce a notice to end tenancy, the landlord must issue a notice to end tenancy in the approved form pursuant to section 52 of the Act. Both of these notices to end tenancy are on an old

out-dated form no longer approved by the Director and not enforceable. As such, I find the tenancy does not end pursuant to these notices and I did not consider the reasons for their issuance. Since I did not consider the reasons for issuance of these notice, the landlord is at liberty to re-issue a One Month Notice, in the approved form; however, having heard May 2021 rent has already been paid it would not be appropriate to re-issue a 10 Day Notice for May 2021 rent.

Based on all of the above, I find the tenancy continues at this time and I do not provide the landlord with an Order of Possession. Nor, do I provide the landlord with a Monetary Order for unpaid rent having heard the landlord has collected rent for all months up to and including the current month.

Conclusion

The tenancy continues at this time as the 10 Day Notice dated June 2, 2021 was nullified by payment of the outstanding rent on June 3, 2021. Further, the notices to end tenancy issued to the tenant by the landlord on March 30, 2021 and May 7, 2021 were not on the approved form and not enforceable.

I did not hear the reasons for the issuance of the One Month Notice since the form was unenforceable. Accordingly, I make no findings on the merits of the matter and the landlord is at liberty to re-issue another One Month Notice to End Tenancy for Cause, in the approved form.

The other remedies sought by the tenant on her applications are dismissed with leave to reapply.

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: August 20, 2021

Residential Tenancy Branch