Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use served on June 25, 2021, issued pursuant to section 49;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation, or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:51 P.M. to enable the respondents to call into this teleconference hearing scheduled for 1:30 P.M. The applicant (the tenant) and respondents WH and DH attended the hearing. DH affirmed he represents respondent JH. Respondents MH and JR did not attend the hearing. The attending parties were 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 the tenant, respondents WH and DH and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

Preliminary Issue – Service

The notice of hearing is dated August 05, 2021. The tenant affirmed she served the notice of hearing and the evidence (the materials) by registered mail on August 05, 2021 to the five respondents. The tracking numbers for the packages mailed to respondents MH and JR are recorded on the cover page of this decision.

Respondents WH and DH confirmed receipt of the packages containing the materials in early August 2021. DH did not raise issues regarding service of the materials to respondent JH.

Respondent DH stated he served the response evidence by registered mail on August 20, 2021. The tenant confirmed receipt of the package containing the response evidence in August 2021.

Based on the testimony offered by the tenant and respondents WH and DH, I find the tenant served the materials to respondents WH, DH and JH and that the respondents served their response evidence to the tenant in accordance with section 89(1)(c) of the Act.

Based on the tenant's testimony and the proof of registered mail, I find the tenant served the materials to respondents MH and JR in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail respondents MH and JR are deemed to have received the materials on August 10, 2021 in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

The tenant testified that she served a second package of evidence documents on August 21 and a third package of evidence documents on August 29, 2021. Respondents WH and DH said at a later point in the hearing that they received one day before the hearing a notice from Canada Post informing that a registered mail package is available for pick on the date of the hearing at 1:00 P.M.

Rules of Procedure 3.13, 3.14 and 3.15 state:

> **3.13 Applicant evidence provided in single package**
> **Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package.**
> An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution] or Rule 10 [Expedited Hearings].
>
> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing.**
>
> (emphasis added)

While the tenant's evidence was not served in accordance with the timelines provided in the Rules of Procedure, much of the materials are irrelevant to the matter at hand. Furthermore, respondents WH and DH only raised concerns about service of second and third packages of evidence documents at a later point in the hearing. The parties provided relevant testimony before the issues about service of the second and third packages of evidence were raised. As such, I find little prejudice to the parties or any breach in the principles of natural justice and find that both parties' evidence was sufficiently served in accordance with section 71(2)(c) of the Act.

Preliminary Issue – exclusion of respondents MH and JR

Both parties agreed the tenancy agreement signed in 2017 listed as landlords MH and JR.

DH, WH and JH purchased the rental unit and the sale was completed on March 23, 2021. The tenant did not dispute this testimony. DH affirmed WH co-owned the rental unit prior to March 23, 2021.

The tenant stated she received a notice to end tenancy for landlord's use (the first Notice) in February 2021. The first Notice was signed by respondent WH. The tenant testified she received a second notice to end tenancy for landlord's use (the second Notice) on March 20, 2021 signed by JH.

Both parties agreed that respondent WH served and the tenant received the third notice to end tenancy for landlord's use (the third Notice) on June 25, 2021. A copy of the third

Notice was submitted into evidence. It is signed by WH and it indicates the landlords are WH, DH and JH.

The tenant said she is seeking monetary compensation from the five respondents because they acted together to terminate her tenancy.

Based on the tenant's undisputed testimony, I find that MH and JR did not serve the notices to end tenancy. The tenant did not explain how respondents MH and JR are responsible for the notices to end tenancy.

Accordingly, pursuant to section 64(3)(a) and (c) of the Act, I amend the application to remove respondents MH and JR.

Preliminary Issue – Cancellation of the Notice

Respondents WH and DH affirmed the third Notice was cancelled on July 19, 2021. The tenant confirmed receipt of a letter dated July 19, 2021:

> Due to family circumstances at this time the landlord advises they hereby withdraw/cancel/revoke their Two Month Notice to End Tenancy served on you on June 25, 2021.

At the hearing respondents WH and DH expressly confirmed the Notice served on June 25, 2021 is cancelled and that the landlords do not currently wish to terminate the tenancy.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant's application for cancellation of the third Notice without leave to reapply.

Preliminary Issue – Partial Withdrawal of the Application

I asked the tenant to explain which order she would like to obtain from the Residential Tenancy Branch and the tenant became emotional. I paused the hearing for 5 minutes.

Upon return, the tenant stated she is feeling better and said that she is seeking monetary compensation for loss of quiet enjoyment due to the three Notices served by the respondents.

I clearly explained to the tenant that the application will proceed only regarding her claim for a monetary order for compensation for damage or loss under the Act and the tenant confirmed she understands my explanation.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's application to withdraw her claim for an order for the landlord to comply with the Act.

The 81-minute hearing proceeded and towards the end of the hearing the tenant was emotional again and said she is constantly harassed by the respondents' agent and threatened that new notices to end tenancy will be served. The tenant is at liberty to submit a new application regarding the alleged harassment by the respondents' agent.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in May 2017. Monthly rent is $1,525.00, due on the first day of the month. The landlords hold in trust a security deposit of $762.50.

The tenant is claiming compensation for loss of quiet enjoyment in the amount of $18,300.00 (the equivalent of 12 times the monthly rent). The tenant affirmed she lost her quiet enjoyment because of the three notices served by the landlord to end tenancy. The tenant is concerned that if the respondents terminate her tenancy she will not be able to secure a new rental unit.

Respondent DH stated the first and second notices were cancelled by the Residential Tenancy Branch on June 17, 2021. The June 17, 2021 decision (the prior decision) was submitted into evidence:

> WH was premature in issuing the first notice as they only had a 1% stake in the property at that time as per the landlords own documentation, accordingly, I cancel the February 17, 2021 Notice. In regard to the March 26, 2021 Notice, WH is the individual that meets the definition of landlord under section 49 of the Act with an interest of at least 50% pursuant to the March 23, 2021 sale, however JH with only a 5% stake in the property issued the notice at that time, accordingly, this notice must be cancelled.
>
> **For the benefit of the parties and for absolute clarity, I am satisfied that the landlords issued the notices in good faith and were not trying to circumvent any rules. However, there is a procedure that must be followed, and the landlords did not do that as they did not meet the definition of landlord at the time of issuing the notices. Its clear to me that the landlords were unsure or unclear about the requirements or timing of issuing notices under the Act, and as noted, I find no bad faith on their part. As I have made a finding that the landlords did not act in bad faith, it does not preclude the landlords from issuing a new and appropriate notice.**
> […]
> Conclusion
> The notices are cancelled. The tenancy continues.
>
> (emphasis added)

Respondent DH testified the landlords acted in good faith when they served the three Notices. The respondents' written submission dated August 20, 2021 states:

> 2. Secondly it should be noted that the applicant was notified in writing by the respondent's property manager on July 19th, 2021 (see attached 2) that the notice to vacate (the subject of this dispute) issued to the applicant on June 25th, 2021 for family/owners use, was WITHDRAWN due to a change in family circumstances as the daughter (JH) elected to remain in her current residence in an effort to try and alleviate the ongoing tension and battles with this tenant.
> 3. It seems fair to state here again for the record that the full and sincere intent of the previous notices to vacate for family use were given with full intentions for the family's own use to occupy for JH, her husband and 2 young children. This has been stated right from the beginning of this whole ordeal... beginning in February of this year. AMPLE evidence of this was provided to the applicant prior to and for the previous hearing (File no. [redacted for privacy]).

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Section 28 of the Act states:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> (a)reasonable privacy;
> **(b)freedom from unreasonable disturbance;**
> (c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6 states:

> **A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.**
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
> […]
> Compensation for Damage or Loss
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16**).**
>
> (emphasis added)

Based on the prior decision, I find the first and second notices were issued in good faith but were cancelled because they were not in accordance with the Act.

Based on the respondents' testimony, written submission and the July 19, 2021 letter, I find the respondents reasonably explained why the third Notice was cancelled. I find that serving three notices to end tenancy in five months is a temporary inconvenience that does not constitute a basis for breach of the entitlement to quiet enjoyment.

Thus, I find the tenant failed to prove that the respondents breached section 28(b) of the Act.

I dismiss the tenant's claim for compensation for loss of quiet enjoyment.

Filing fee

The third Notice was served on June 25, 2021 and the tenant disputed it on July 08, 2021. As the respondents cancelled the Notice on July 19, 2021, after the tenant submitted the application to cancel the Notice, I authorize the tenant to recover the filing fee.

Conclusion

The tenant's application for a monetary order for loss is dismissed without leave to reapply.

Pursuant to section 72(2)(a) the tenant is authorized to deduct $100.00 from the next rent payment.

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: September 15, 2021

Residential Tenancy Branch