



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR-MT, OLC

Introduction:

A hearing was convened on June 21, 2021 in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, for more time to apply to cancel the One Month Notice to End Tenancy for Cause, to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution. It appears that the application for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement relates to the Tenant's desire to continue living in the rental unit.

The hearing on June 21, 2021 was adjourned and was reconvened on October 12, 2021.

Service of the Dispute Resolution Package was addressed in my interim decision of June 21, 2021.

As explained in my interim decision, the hearing on June 21, 2021 was adjourned to provide the Landlord with the opportunity to re-serve evidence to the Tenant. In an effort to ensure there were no further problems with service of evidence to the Tenant, I ordered the Tenant to attend the Landlord's business office and pick up an evidence package from that office, which the Landlord stated would be ready for pick up anytime after noon on June 21, 2021.

At the hearing and in my interim decision, the Tenant was advised that he must pick up the evidence from the Landlord's business office and that it will be considered as

evidence at the reconvened hearing even if he chooses not to pick up the evidence package.

At the reconvened hearing the Landlord and the Tenant agreed that that the Tenant did not pick up the evidence package. I find that the Tenant did not make a reasonable effort to comply with my direction to pick up this evidence package from the Landlord's business office. I find that this evidence was sufficiently served to the Tenant, pursuant to section 71(2)(c) of the *Act*, and it was accepted as evidence for these proceedings.

In my interim decision I authorized each party to submit a copy of a letter, dated March 17, 2021, which was referred to at the hearing on June 21, 2021. This document was submitted to the Residential Tenancy Branch on July 06, 2021 by the Landlord. The Agent for the Landlord stated that this document was made available to the Tenant in the evidence package left for him at the Landlord's business address on June 21, 2021. I find that this evidence was also sufficiently served to the Tenant, pursuant to section 71(2)(c) of the *Act*, and it was accepted as evidence for these proceedings.

The Landlord submitted additional evidence to the Residential Tenancy Branch on September 13, 2021. As this evidence was submitted after the hearing commenced, and the Landlord was not given authority to submit the additional evidence after the hearing commenced, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. At each hearing each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. At each hearing each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Should the Tenant be granted more time to dispute the One Month Notice to End Tenancy for Cause and, if so, should that Notice be set aside?
Should a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Background and Evidence:

The Landlord stated that the tenancy began in 2015 or 2016. The Tenant stated that it began in 2015. The parties agree that rent is due by the first day of each month.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has not been served to the Tenant.

The Landlord stated that a One Month Notice to End Tenancy for Cause was mailed to the Tenant at the rental unit, by regular mail, on February 22, 2021. The Landlord stated that the One Month Notice to End Tenancy for Cause was not returned to the Landlord by Canada Post. The Landlord submitted a photograph of an envelope being held in front of a Canada Post mailbox, which the Landlord contends is evidence that the One Month Notice to End Tenancy for Cause was mailed.

The Tenant stated that he did not receive the One Month Notice to End Tenancy for Cause in the mail.

The Agent for the Landlord stated that February 22, 2021 she and another person posted the One Month Notice to End Tenancy for Cause on the door of the rental unit. She stated that she photographed the envelope that was attached to the door of the rental unit. That photograph was submitted as evidence for these proceedings.

The Agent for the Landlord stated that shortly after she posted the One Month Notice to End Tenancy for Cause on the Tenant's door, she met the Tenant exiting the elevator on the fifth floor. She stated that she told the Tenant she had posted an important document on his door; she watched him walk toward his rental unit; but she did not see him pick up the elevator as he passed through a fire door prior to reaching his unit.

The Landlord submitted a photograph of an envelope being lodged between a door and a door frame, which the Landlord stated is evidence that the One Month Notice to End Tenancy for Cause was posted at the Tenant's door on February 22, 2021.

The Tenant stated that he has not received the One Month Notice to End Tenancy for Cause that the Landlord claims was posted on his door on February 22, 2021.

The Landlord stated that she met with the Tenant on February 22, 2021, in the presence of two other people, at which time she attempted to personally serve the Tenant with the One Month Notice to End Tenancy for Cause, which the Tenant would not accept.

The Tenant stated that he met with the Landlord on February 22, 2021 at which time he was told his tenancy was ending. He stated that he refused to accept the One Month

Notice to End Tenancy for Cause that the Landlord was attempting to give him because he is unable to read English.

On the Tenant's Application for Dispute Resolution he declared that he personally received the One Month Notice to End Tenancy for Cause on February 22, 2021. At the hearing on October 12, 2021 he stated that this was a reference to the "verbal notice" he received.

At the first hearing the Tenant stated that he was not aware that a One Month Notice to End Tenancy for Cause had been served until he was served with a letter, dated March 17, 2021, in which the Landlord referred to the One Month Notice to End Tenancy for Cause. The Landlord stated that the letter dated March 17, 2021 was served to the Tenant as a follow-up to the One Month Notice to End Tenancy for Cause, which was served on February 22, 2021.

The One Month Notice to End Tenancy for Cause, which was submitted in evidence by the Landlord, declares that the Tenant must vacate the rental unit by March 23, 2021. The reasons cited for ending the tenancy is that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The Tenant applied for more time to dispute the One Month Notice to End Tenancy for Cause. When asked why he applied for more time to dispute the One Month Notice to End Tenancy for Cause, the Tenant declared that he did not apply for more time because the Residential Tenancy Branch told him he had filed his Application for Dispute Resolution on time. The Tenant was provided with several opportunities to explain why his Application for Dispute Resolution was not filed prior to March 11, 2021 and he simply reiterated that it was not necessary.

The Agent for the Landlord stated:

- she is a chaplain at the residential complex;
- the occupant of unit 501 told her that on January 16, 2021 she left her bag in the hallway outside her front door for a very brief period of time while she stepped back inside her unit;

- when the occupant returned to the hallway, she found her bag missing and she heard the Tenant's door closing;
- the occupant's keys were in the bag;
- the occupant spoke with the Tenant regarding the missing bag and he denied taking the bag;
- she heard conflicting stories from the Tenant and the occupant regarding the missing bag;
- as a result of the conflicting stories, she asked the Landlord to review surveillance tapes.

In a written statement a third occupant of the residential complex declared that:

- the occupant of unit 501 told her that on January 16, 2021 she left her bag in the hallway outside her front door for approximately five minutes while she stepped back inside her unit;
- when the occupant returned to the hallway, she found her bag missing and she heard the Tenant's door closing;
- the occupant spoke with the Tenant regarding the missing bag and he denied taking the bag;
- the occupant later found her bag near the garbage bins for the residential complex.

The Landlord submitted a copy of a video surveillance tape, dated January 17, 2021 at 1545 hours, in which a male can be seen throwing something that appears to be the size of a wallet in the corner near some garbage bins. The Landlord stated that the male in the video is the Tenant. The Tenant stated that he has not viewed this video evidence and he does not recall throwing an item that appears to be a wallet near the bins.

The Landlord submitted a copy of a video surveillance tape, dated January 17, 2021 at 1547 hours, in which a male can be seen searching something that appears to be the size of a wallet and then throwing that item in the corner near some garbage bins. The Landlord stated that the male in the video is the Tenant. The Tenant stated that he has not viewed this video evidence and he does not recall searching a wallet sized items near the bins.

The Landlord submitted a copy of a video surveillance tape, dated January 17, 2021 at 1601 hours, in which a female and male can be seen viewing an item that appears to be the size of a wallet in the corner near some garbage bins. The Landlord stated that

the female in the video is the occupant of unit 501. The Tenant stated that he has not viewed this video evidence.

The Landlord stated that she believes the video evidence establishes that the Tenant stole a bag from outside of unit 501 and that he subsequently discarded the Tenant's key case, which is similar in size to a wallet, which was inside the bag when it was stolen.

When asked to provide an explanation of the video evidence the Tenant stated that:

- although he has not seen the video evidence, it is possible that it shows him discarding his own garbage
- although he has not seen the video evidence, it is possible that it shows him finding the wallet sized item and then discarding it after looking at it;
- he does not recall finding such an item;
- he did not steal a bag from the hallway near unit 501; and
- the occupant of unit 501 "attacked" him regarding the theft and he told her he did not take her bag.

Analysis:

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has not been served to the Tenant. I therefore dismiss his application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 47(1)(e) of the *Act* permits a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

On the basis of the testimony of the Landlord and the photograph of the envelope in front of a Canada Post mailbox, I find that the One Month Notice to End Tenancy for Cause that is the subject of these proceedings was mailed to the Tenant at the rental unit, by regular mail, on February 22, 2021. As this document was not returned to the Landlord by Canada Post, I find, on the balance of probabilities, that it was received by the Tenant. I therefore find, pursuant to section 90 of the *Act*, that the One Month

Notice to End Tenancy for Cause, which was mailed to the Tenant, is deemed received on February 27, 2021.

On the basis of the testimony of the Agent for the Landlord and the photograph of the envelope posted on the door, I find that the One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on February 22, 2021. On the basis of the testimony of the Agent for the Landlord, I find it highly likely that the Tenant received the One Month Notice to End Tenancy for Cause that was posted on his door, as he was seen walking towards his door shortly after it was posted. I therefore find, pursuant to section 90 of the *Act*, that the One Month Notice to End Tenancy for Cause, which was posted on the door of the rental unit, is deemed received on February 25, 2021.

Although the Tenant denies receiving the One Month Notice to End Tenancy for Cause that was posted on his door and he denies receiving the One Month Notice to End Tenancy for Cause that was mailed to him, I find that his denials are not credible. I find his denials are not credible, in part, because the One Month Notice to End Tenancy for Cause, which was mailed to him, was not returned to the sender by Canada Post. I find the denials are not credible, in part, because the Tenant has repeatedly denied receipt of documents when it is in his best interest to do so, even when the evidence clearly shows those documents have been served in accordance with the *Act*.

I find that the Landlord properly served the Tenant with notice of the Landlord's intent to end the tenancy pursuant to section 47(1)(e) of the *Act*, which permits a landlord to end a tenancy if the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Section 47(4) of the *Act* permits a tenant to dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

As I have concluded that the Tenant is deemed to have received the One Month Notice to End Tenancy for Cause that was posted on his door on February 25, 2021, I find that he had until March 07, 2021 to dispute the One Month Notice to End Tenancy for Cause. As March 07, 2021 was a Sunday, this deadline is automatically extended to March 08, 2021.

As I have concluded that the Tenant is deemed to have received the One Month Notice to End Tenancy for Cause that was mailed to him on February 27, 2021, I find that he had until March 09, 2021 to dispute the One Month Notice to End Tenancy for Cause.

Residential Tenancy Branch records show that the Tenant did not dispute the One Month Notice to End Tenancy for Cause until March 11, 2021.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated timelines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation, would be that the Tenant was hospitalized for an extended period after receiving the Notice.

I find that the Tenant failed to provide any reasonable explanation for failing dispute the One Month Notice to End Tenancy for Cause within 10 days of receiving it. I therefore dismiss the Tenant’s application for more time to apply to set aside the Notice to End Tenancy.

Section 47(5) of the *Act* stipulates that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As the Tenant did not dispute the One Month Notice to End Tenancy for Cause within ten days of the date he is deemed to have received the One Month Notice to End Tenancy for Cause, I find that he is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. I therefore find that this tenancy ended, pursuant to section 47(5) of the *Act*, and I dismiss the Tenant’s application to cancel the One Month Notice to End Tenancy for Cause.

Even if the Tenant had filed his Application for Dispute Resolution on time, I would conclude that the Landlord had the right to end this tenancy pursuant to section 47(1)(e) of the *Act*.

I find that, on the balance of probabilities, on January 16, 2021 the Tenant stole a bag from the hallway in front of unit 501, which belonged to the occupant of that unit. I find

that this constitutes theft as that term is defined by Criminal Code and, as such, is an illegal act. I find this act adversely affected the occupant's quiet enjoyment of her rental unit, as her keys were in the stolen bag. I therefore find that the Landlord has established grounds to end this tenancy pursuant to section 47(1)(e) of the *Act*.

In determining that the Tenant stole the bag from the hallway outside of unit 501 I was influenced, in small part, by the occupant's declaration that the bag was left in the hallway for a brief amount of time and that she heard someone entering the Tenant's neighbouring unit when she came outside to retrieve her bag. Given that the Tenant or his guest was near the bag shortly before it was stolen, I find it reasonable to conclude that this person took the bag.

While I acknowledge that the declaration regarding the theft from the occupant of unit 501 is hearsay evidence, I find it reasonable to consider that evidence in these circumstances, as the occupant does not speak English and she reported her version of events to two separate individuals, both of whom have provided hearsay evidence.

In determining that the Tenant stole the bag from the hallway outside of unit 501 I was heavily influenced by the surveillance video evidence that shows the Tenant in possession of an item belonging to the occupant of unit 501, which was in the stolen bag. As the Tenant was in possession of this property the day after the theft, I find it reasonable to conclude that he stole the property.

In adjudicating this matter, I have placed no weight on the Tenant's submission that he may have been throwing away his own garbage in the surveillance video evidence. It is clear from the video evidence that this is not the case.

In adjudicating this matter, I have placed no weight on the Tenant's submission that although he has not seen the video evidence, it is possible that it shows him finding the wallet sized item and then discarding it after looking at it, although he does not recall finding such an item. I find this to be highly unlikely as he would have "found" the item the day after he was accused of stealing a bag and in such circumstances, would have certainly remembered finding the item.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the Tenant's application to cancel the One Month Notice to End Tenancy for Cause and that Notice complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant has failed to establish the merits of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing the Application.

Conclusion:

I grant the Landlord an Order of Possession that requires the Tenant to vacate the rental unit by 1:00 p.m. on October 31, 2021. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 12, 2021

Residential Tenancy Branch