Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPL, FFL
Tenants: CNL, LRE, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The tenants sought to cancel a notice to end tenancy and restrict the landlord's access to the rental unit. The landlord sought an order of possession.

At the outset of the first hearing the tenant's legal counsel, sought an adjournment as she has recently been off work due to illness. Counsel stated she went off work on February 8, 2022 and was still off today, but called into the hearing for the adjournment. Counsel stated she required the time because it is her usual practice to meet with her clients within the two weeks prior to a hearing to go over the case and she had not been able to do so due to her illness.

The landlord was opposed to an adjournment as these applications had been made in October 2021 and they should not require any additional time to prepare.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

As the request for adjournment was based on illness, I find there is no deliberate intention or neglect on the part of the tenant's counsel. I am satisfied that it is reasonable for parties who are represented by legal counsel would need time to immediately prepare prior to a hearing and that illness could interrupt that process. I

find that by allowing the tenant's counsel to prepare her clients after illness will lead to resolution of the matters before me.

However, I also agree with the landlord that an adjournment of any substantial length would be prejudicial to the landlord as the effective date of the subject Notice to End Tenancy was November 30, 2021 and further delays would be unfair to the landlord.

Tenant's legal counsel stated she would be returning to work on Monday, February 21, 2022 and requested two weeks for the adjournment or a minimum of one week. A review of my schedule shows that, with the exception of Wednesday, February 23, 2022 at 9:30 a.m., my next available hearing spot is in the last week of May 2022.

As such, I grant an adjournment. I advised the parties that the hearing would reconvene in my next available hearing, which is February 23, 2022 at 9:30 a.m. I directed the parties to use the same call-in procedures as they have in the notice of the original hearing – both parties called into the reconvened hearing.

I ordered that this adjournment was not an opportunity for either party to submit additional evidence. I also ordered that the landlord was not required to serve the tenants again with his Application or his evidence, but that he could do so if he chose. For clarification on this last point, see my findings below on the service of the landlord's Application and evidence.

The landlord provided evidence that each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 21, 2021 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Tracking information provides that notices were provided by Canada Post to both tenants on October 25, 2021 and final notices on October 30, 2021 that each package was available for pick up at their local Post Office. The landlord has provided evidence that both of the packages were returned to them as unclaimed.

During the first hearing, I asked the tenants why they did not claim the registered mail that was sent to them in October from the landlord. The female tenant stated they had not received any notices from Canada Post that they had received registered mail.

The mail tenant then stated that they didn't pick up the registered mail because their legal counsel had submitted their Application and the landlord should have served everything to her. In the alternative, the mail tenant continued, the landlord lives next door and he should have just delivered his Application and evidence in person.

I note the Section 59(3) of the *Act* states that a person who makes an application for dispute resolution must give a copy of the application to the other party. There is

nothing in the legislation that says the applicant is to serve their application to the other party's legal counsel. As such, the tenant's expectation that the landlord should have served their application to counsel is not supported by legislation.

In addition, Section 89 (1) of the *Act* states an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

> (a)by leaving a copy with the person;
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
> (f)by any other means of service provided for in the regulations.

Section 43 of the Residential Tenancy Regulation states 43 for the purposes of section 89 (1)(f) of the *Act*, the documents described in section 89 (1) of the *Act* may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

As such, despite the tenant's submission that the landlord should have served the application personally because they live next door, I find there is no limitation on the landlord as to how they serve the documents except for those outlined in Section 89, which includes the use of registered mail to the address where the tenant resides.

Based on the conflicting testimony of both tenants, I find that each of the tenant's received two notices each from Canada Post regarding the service of the landlord's evidence and that by failing to claim these packages, the tenants have deliberately acted to avoid service.

Based on the above, I find that both tenants have been sufficiently served with the documents for the purposes of the *Act*, pursuant to Section 71(1)(b). As such, I have considered the landlord's documentary evidence.

Both hearings were conducted via teleconference and were attended by the landlord, as well as both tenants and their legal counsel.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to the tenants' claim to suspend or set conditions on the landlord's right to enter the rental unit. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss the tenants' claim for suspending or setting conditions on the landlord's right to access the rental unit. I grant the tenants leave to re-apply for their other claim.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act.*

Should the tenants fail to succeed in cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property it must be determined if the landlord is entitled to an order of possession and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Act*.

Background and Evidence

During the hearing the parties reached the following settlement:

1. The Two Month Notice to End Tenancy for Landlord's Use of Property, issued by the landlord on September 23, 2021 is cancelled;
2. The parties agree the landlord is not obligated to provide any compensation to the tenants relating to the Two Month Notice to End Tenancy;
3. The parties agree the tenancy will end on May 31, 2022;
4. The tenants agree to vacate the rental unit no later than May 31, 2022;
5. The parties acknowledge that each bears responsibility for their own filing fees for their respective Applications for Dispute Resolution.

Conclusion

In support of the above noted settlement and by agreement of both parties, I grant the landlord an order of possession effective **May 31, 2022, after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: February 23, 2022

Residential Tenancy Branch