Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310051752: OLC, CNC-MT, FFT
File #310052170: OPC

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the "*Act*"):

- To cancel a One-Month Notice to End Tenancy dated September 23, 2021 (the "One-Month Notice") pursuant to s. 47;
- An order pursuant to s. 66 for more time to dispute the One-Month Notice;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- Return of her filing fee pursuant to s. 72.

The Landlord applies for an order for possession pursuant to s. 55 of the *Act* after issuing the One-Month Notice.

S.W. appeared as the Tenant. R.R. appeared as agent for the Landlord. T.R. attended the hearing as an assistant to R.R. but provided no evidence at the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenant advised that her Notice of Dispute Resolution and evidence were served on the Landlord by way of registered mail sent on October 25, 2021. The Landlord acknowledges receipt of the Tenant's application materials. I find that the Tenant served her Notice of Dispute Resolution and evidence in accordance with s. 89 of the *Act*.

The Landlord's agent was unable to demonstrate that their Notice of Dispute Resolution and evidence was served on the Tenant at all. The Tenant does not acknowledge receiving it, which is understandable given that the Landlord's agent admitted that the Landlord did not serve their application materials.

Pursuant to Rule 3.5 of the Rules of Procedure, an applicant must demonstrate service of their application materials at the hearing. I find that the Landlord has failed to do so under the circumstances. Accordingly, the Landlord's application is dismissed with leave to reapply. The evidence they provided to the Residential Tenancy Branch is not admitted into the record as it was not served on the Tenant.

Preliminary Issue – Tenant's Claim

Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The Tenant applies for an order under s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement. I find that the primary issue in the Tenant's application is whether the tenancy will continue or end based on the One-Month Notice and the Tenant's claim under s. 62 is not sufficiently related to that of the One-Month Notice. Indeed, if the One-Month Notice is upheld and an order for possession granted, an order under s. 62 would be moot in any event.

Accordingly, I sever the Tenant's claim under s. 62 pursuant to Rule 2.3 of the Rules of Procedure. If the tenancy continues, the Tenant's claim under s. 62 will be dismissed with leave to reapply. If the tenancy ends, the Tenant's claim under s. 62 will be dismissed without leave to reapply.

The hearing proceeded strictly on the Tenant's claims under ss. 47, 66, and 72.

Issue(s) to be Decided

1) Should the Tenant be given more time to dispute the One-Month Notice?
2) Should the One-Month Notice be set aside?
3) Is the Tenant entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit on October 1, 2014.
- Rent is currently $1,725.50 due on the first day of each month.
- The Landlord holds a security deposit of $750.00 and a pet damage deposit of $750.00.

The Tenant provides a copy of the tenancy agreement in her evidence.

The rental unit is a multi-unit residential property which was purchased by the respondent Landlord in or about March 2021.

The Landlord indicates that the other tenant listed in the Tenant's application is D.B., which they say is not a Tenant as per the tenancy agreement or to their knowledge. The Tenant denies this and indicates D.B. has been her roommate since October 2014, that this was known to the previous landlord, and that the previous landlord consented to D.B. being an occupant with her.

The Landlord says that they issued the One-Month Notice after an incident took place on September 17, 2021. The Landlord says they received a complaint from another tenant at the building saying that a middle-aged man who was seen entering or exiting the Tenant's rental unit was abusive towards them. The Landlord's agent failed to provide specifics with respect to the incident, though he says the other tenants described the discussion as abusive and threatening. I was told that the dispute started because of an alleged dog barking incident and that the other tenants had to close the door on the middle-aged man, who continued to yell at them through the door of their rental unit.

The Landlord's agent says that they have not received complaint with respect to the other tenant's dog and that the other tenant moved into the rental unit in August 2021.

The Landlord did not call the other tenant as a witness. As their evidence was not admitted into the record, no statement from the other tenants were before me.

The Landlord's agent says that the One-Month Notice was issued directly because of the September 17, 2021 incident. They say that no conversation, letter, or warning was issued to the Tenant prior to the One-Month Notice being issued.

The Landlord says that the One-Month Notice was served via registered mail sent on September 23, 2021 with a copy sent via email on the same date to the Tenant's personal and work emails. The Tenant denies receiving the One-Month Notice via registered mail and says that she only received the One-Month Notice after she accessed her personal email on October 12, 2021. The Landlord admits that email is not an approved form of service.

The Tenant admits that she attended the post office to retrieve a registered mail package but that she could not receive it on that occasion as she did not have her photo ID with her at the time. The carrier required the photo ID to confirm the identity of the recipient. The Tenant says that she never went back to the post office to pick it up as she has a demanding 12-hour per day work schedule and that the pick-up of the registered mail package had slipped her mind.

The Tenant says that she has no knowledge of the incident of September 17, 2021 and says that she first heard about it from the One-Month Notice. D.B. was not called as a witness nor was a statement from him put into evidence by the Tenant.

The Tenant indicated that she introduced herself to the other tenant across the hall shortly after they moved in. The Tenant says that she said her roommate, D.B., could be a "hot head" and that if there were any problems with him, they should contact her directly or call the police.

The Tenant continues to reside within the rental unit.

Analysis

The Tenant asks for more time to dispute the One-Month Notice.

Pursuant to s. 88(1)(c), the Landlord is entitled to serve the One-Month Notice by way of mail or registered mail. I am satisfied that the Landlord did, in fact, serve the One-Month Notice on the Tenant by way of registered mail sent September 23, 2021 as indicated by the Landlord's agent at the hearing. The Tenant acknowledges a package was sent

to the post office, that she attended the post-office to retrieve the package, and that she was unable to do so as she did not have her photo ID. The Tenant took no further action as the registered mail package had slipped her mind.

Section 90(a) of the *Act* establishes that documents served by mail are deemed to be received by the recipient five days after it is mailed unless there is evidence it was received earlier. Policy Guideline #12 provides guidance with respect to deemed service provision of the *Act*. It notes, citing *Atchison v British Columbia*, 2008 BCSC 1015, that the deeming provisions set a rebuttable presumption that a document is served on the dates set by s. 90, which can be rebutted if fairness requires. Policy Guideline #12 sets that there must be evidence to show that the deeming provisions should not be applied.

Policy Guideline #12 states the following with respect to service by way of registered mail:

> Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Here, the Tenant acknowledges the registered mail and that she could not pick it up as she did not have her ID. Rather than retrieving her ID and attending the post office, the Tenant says the matter slipped her mind and took no further action. I find that the circumstances are not such that the deeming provisions of the *Act* should be overridden as the reason the Tenant did not pick up the package is the direct result of her own actions.

I find that the One-Month Notice was served in accordance with s. 88 of the *Act* by way of registered mail sent to the Tenant on September 23, 2021. Pursuant to s. 90 of the *Act*, I deem that the One-Month Notice was received by the Tenant on September 28, 2021.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice.

I have reviewed the One-Month Notice and find that it complies with the formal requirements under s. 52 of the *Act*.

I have found that the Tenant received the One-Month Notice on September 28, 2021. Pursuant to Rule 2.6 of the Rules of Procedure, I find that the Tenant's application was made on October 12, 2021, which is the day the Tenant submitted her application and filing fee to the Residential Tenancy Branch. Accordingly, the Tenant had until October 8, 2021 to file her application. The Tenant filed her application outside the 10 days permitted to her by s. 47(4) of the *Act*.

The Tenant asks for more time to dispute the One-Month Notice and argues that she only received it by way of email on October 12, 2021. Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional circumstances.

Policy Guideline #36 provides the following guidance with respect to "exceptional circumstances":

> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.
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> Some examples of what might not be considered "exceptional" circumstances include:
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> - the party who applied late for arbitration was not feeling well
> - the party did not know the applicable law or procedure
> - the party was not paying attention to the correct procedure
> - the party changed his or her mind about filing an application for arbitration
> - the party relied on incorrect information from a friend or relative
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> Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:
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> - the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

I find that the Tenant has failed to establish that there are exceptional circumstances that warrant the application of s. 66. The Tenant provides no evidence why she could not have filed earlier and emphasized that she has a busy work schedule and only received the One-Month Notice in her email on October 12, 2021. With respect, these are not sufficient to justify the application of s. 66. Indeed, the reason the Tenant failed to apply in time is largely the result of her own actions by failing to pick up the registered mail that was sent to her by the Landlord. The Tenant has failed to act with diligence in this matter. Accordingly, I dismiss the Tenant’s application for more time to dispute the One-Month Notice.

I find that the Tenant failed to dispute the One-Month Notice within the 10-days permitted to her under s. 47(4). Given this, s. 47(5) of the *Act* is engaged and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date of the One-Month Notice is October 31, 2021.

As the conclusive presumption under s. 47(5) applies, the Tenant’s application to cancel the One-Month Notice is dismissed.

Section 55(1) of the *Act* provides that where a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the

landlord an order for possession. Accordingly, I grant the Landlord an order for possession.

Conclusion

The Tenant's application for more time to dispute the One-Month Notice is dismissed and the Tenant is conclusively presumed to have accepted the One-Month Notice. The Tenant's application to cancel the One-Month Notice is, therefore, dismissed.

The Landlord is entitled to an order for possession pursuant to s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

As the tenancy is over, the Tenant's application under s. 62 is dismissed without leave to reapply.

As the Tenant was unsuccessful in her application, I find that she is not entitled to the return of her filing fee. Her application under s. 72 is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order for possession on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord 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 *Residential Tenancy Act*.

Dated: February 24, 2022

Residential Tenancy Branch