



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, OLC

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “*Act*”):

- To cancel a One-Month Notice to End Tenancy signed November 10, 2021 (the “One-Month Notice”) pursuant to s. 47 of the *Act*;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- For return of her filing fee pursuant to s. 72.

C.S. appeared as Tenant. C.C. appeared as Landlord.

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 indicates that the Notice of Dispute Resolution was served by way of registered mail sent on December 3, 2021. The Landlord acknowledges receipt of the Tenants Notice of Dispute Resolution. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act* and was acknowledged received by the Landlord.

The Tenant indicated that she did not serve her evidence on the Landlord until March 13, 2022. Rule 3.14 of the Rules of Procedure requires applicants to serve their evidence on respondents at least 14-days before the hearing. The Tenant failed to do so. As the Tenant failed to serve her evidence in compliance with the appropriate timelines, it is not included into the record as it would be procedurally unfair to the Landlord to do so.

The Landlord indicates that he provided responding evidence on the Tenant by posting it to her door on March 5, 2022. The Tenant acknowledges receiving the responding evidence on March 7, 2022. I note that posting documents to the Tenants door is not a method open to the Landlord as s. 89(2) does not apply. However, the Tenant acknowledges receipt of the evidence on March 7, 2022, which complies with the 7-day service time limit for application respondents set by Rule 3.15 of the Rules of Procedure. No objections were raised by the Tenant with respect to the method of service. Accordingly, I find that pursuant to s. 71(2) of the *Act* the Tenant was sufficiently served with the Landlord's responding evidence on March 7, 2022.

Preliminary Issue – The One-Month Notice

Neither party provided a copy of the One-Month Notice. I conducted the hearing in its absence and advised the parties that they were permitted to upload their copy of the One-Month Notice by the end of day on March 15, 2022. I directed they both do so that I could verify that the notices were the same as the evidence was not served on the other.

I have reviewed both copies of the One-Month Notice provided to me by the parties after the hearing. They are the same. I included the One-Month Notice into evidence as permitted by Rule 3.19 of the Rules of Procedure.

At the hearing, the Landlord advised that the One-Month Notice was posted to the Tenant's door on November 10, 2021. The Tenant acknowledges receiving the One-Month Notice on that date. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and the Tenant acknowledged its receipt on November 10, 2021.

Preliminary Issue – The Tenant's Application

The Tenant applies for various and wide-ranging relief. 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's application included a claim that the Landlord comply with the *Act* pursuant to s. 62. I advised the parties at the outset of the hearing that the primary issue

was whether the tenancy would end or continue based on the One-Month Notice. The claim under s. 62, which contemplates relief for an active tenancy, is not sufficiently related to the issue of whether a tenancy will end based on a notice to end tenancy.

I indicated that I would hear submissions on the One-Month Notice and, if time permitted, the claim under s. 62 could also be heard. There was insufficient time to hear the claim under s. 62.

I find that the Tenant's claim under s. 62 is not sufficiently related to the primary issue of the application, which is whether the tenancy would continue or end based on the One-Month Notice. Accordingly, I sever this aspect of the Tenant's application pursuant to Rule 2.3. If the One-Month Notice is cancelled and the tenancy continues, the claim under s. 62 will be dismissed with leave to reapply. If the One-Month Notice is upheld and the tenancy ends, it will be dismissed without leave to reapply.

Issue(s) to be Decided

- 1) Whether the One-Month Notice ought to be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Is the Tenant entitled to the return of her 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 took possession of the rental unit in October 2020.
- Rent of \$1,575 is due on the first day of each month.
- The Tenant is to pay half of the utilities for the residential property.
- The Landlord holds a security deposit of \$887.50 in trust for the Tenant.

The parties advised that the Landlord recently purchased the property. The Tenant lived in a basement suite with her daughter and the previous owner and landlord lived upstairs. The parties further advised that the basement has three-bedrooms. Previously, the Tenant had access to two of the rooms and the third room was used by the previous landlord as storage.

When the current Landlord took possession of the residential property, they did not occupy the upstairs and chose to rent it out. Given this, the third room in the basement that was used by the previous owner as storage would be vacant.

The parties both confirmed that they signed a new tenancy agreement in July 2021, which was put into evidence by the Landlord. The Landlord indicated that since the third room was no longer used as storage, it would revert to the Tenant and form part of the rental unit. According to the Landlord, the third room was given to the Tenant with the understanding that she could find a roommate to help her with her rent. This was confirmed by the Landlord at the hearing and in written submissions dated March 5, 2022 which formed part of his evidence.

The Tenant indicates that her daughter, who lived with her in the rental unit, moved in with her father in August 2021. I am told that this was intended to be a temporary arrangement as the Tenant was unwell, though the daughter has not moved back with the Tenant.

As the Tenant's daughter was no longer living with her, she found two roommates to occupy the rooms that were vacant. Both took occupancy of their respective rooms in September 2021. The Tenant indicates that the roommates were of a short-term nature as it was expected that her daughter would return. As mentioned above, this did not happen.

The Tenant indicates that she and the Landlord met on October 20, 2021 to discuss noise complaints she had with the tenants that occupied the upstairs of the residential property. As advised by the Landlord and the Tenant, it was during this meeting that the Landlord discovered that the Tenant had two roommates.

The Landlord's evidence includes an email exchange between the parties. In the initiating email from the Landlord dated October 21, 2021, he asks the Tenant to provide information regarding the additional occupants. The email does not mention that the occupants were not permitted.

At the hearing, the Landlord indicates that there was an issue with getting the second roommate as that was not his understanding of their arrangement when the Tenant took possession of the third room.

The Tenant's response email is dated October 23, 2021, which provides the Landlord the requested information and explains the circumstances with respect to renting the second room. It describes how it was the Tenant's understanding the prohibition against subletting applied when she was no longer in possession of her room and rented it to someone else. It ends by asking whether the second roommate can stay within the rental unit.

The Landlord issued the One-Month Notice on the basis that the Tenant assigned or sublet the rental unit without the Landlord's written consent. At the hearing, the Landlord indicated that there was complaint from the upstairs tenant that people were coming and going from the property. The Landlord described his concern that these peoples were unknown and that the upstairs tenant was afraid as she has children living with her. The Landlord expressed a concern that the Tenant was using the room for short-term rentals.

The Tenant acknowledges that individuals may have knocked on the door for the upstairs and that this was beyond her control. She indicates that she had prospective roommates attend the rental unit and gave directions to the basement. She says that some of them did not heed the directions.

The Tenant further advises that her initial roommates from September 2021 have moved, though this was the intention given the expectation that her daughter would move back into the rental unit. The Tenant denies that she is running a short-term rental business and that she now has two new roommates that are not of a short-term nature.

Analysis

The Tenant asks to cancel the One-Month Notice and for return of her filing fee.

Pursuant to s. 47 of the *Act*, a landlord may end a tenancy with cause after issuing a notice effective no earlier than one-month after it is received by the tenant and the day before the rent is due as per the tenancy agreement. In this case, the Landlord issued the One-Month Notice pursuant to s. 47(1)(i) of the *Act*. As stated in Rule 6.6 of the Rules of Procedure, the Landlord bears the burden of providing that the One-Month Notice was properly issued.

If a tenant chooses to dispute a one-month notice to end tenancy, they must do so by filing an application with the Residential Tenancy Branch within 10 days of receiving the notice. At the top of the One-Month Notice it states the following:

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant indicates she received the One-Month Notice on November 10, 2021. Pursuant to Rule 2.6 of the Rules of Procedure, an application is considered to have been made when the application and the fee or fee waiver is received by the Residential Tenancy Branch. In this case, the Tenant filed her application and paid her fee on November 22, 2021. I find that her application was made on November 22, 2021.

The Tenant had until November 20, 2021 to file her application based on her acknowledged receipt of the One-Month Notice on November 10, 2021. I find that the Tenant failed to dispute the One-Month Notice within the 10-day period permitted to her under s. 47(4) of the *Act*.

As the Tenant failed to dispute the notice within the time permitted to her under s. 47(4), the conclusive presumption under s. 47(5) is engaged. I find that the Tenant is conclusive presumed to have accepted the end of the tenancy and ought to have vacated the rental unit on the effective date of the One-Month Notice. In this case, the effective date is December 31, 2021.

As the conclusive presumption applies, I dismiss the Tenant's application to cancel the One-Month Notice.

Section 55(1) 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.

I have reviewed the One-Month Notice provided to me by both parties after the hearing. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective

date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

As the Tenant's application to cancel the One-Month Notice is dismissed and the One-Month Notice complies with the formal requirements of s. 52, I grant the Landlord an order for possession.

Conclusion

The Tenant failed to file her application to dispute the One-Month Notice within the time permitted to her under the *Act* and is conclusive presumed to have accepted the end of the tenancy pursuant to s. 47(5). The Tenant's application to cancel the One-Month Notice is therefore dismissed.

As the Tenant's application is dismissed and the One-Month Notice complies with s. 52, I grant the Landlord an order for possession pursuant to s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit within **two (2) days** of receiving this order.

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

The Tenant was unsuccessful in her application. Accordingly, her claim under s. 72(1) of the *Act* for the recovery of her filing fee is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of 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: March 16, 2022

Residential Tenancy Branch