



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, OPR, MNDL, FFL
Tenants: CNR-MT; CNR, CNL; RP LRE, OT, FFT

Introduction

This hearing dealt with three Applications for Dispute Resolution. Two Applications were submitted by the tenants seeking to cancel two notices to end tenancy; an order to have the landlord make repairs and restrict the landlord's access to the rental unit; and dispute a plumbing bill. The landlord seeks an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords; both tenants; and the tenants' legal counsel.

With the exception of some minor late issues with the service of evidence both parties agreed that they had received each others respective applications and evidence. Both parties agreed that they had reviewed each others evidence and were prepared to respond to each application. One major exception was the tenants' Application with the file number ending in 7212.

The tenant could not recall if they had served the landlord with this Application and if they did they could not remember when they did serve it. The landlord testified that they had not received the tenants' Application 7212.

As such, based on the testimony of both parties, I am not satisfied that the tenants served the landlord with the Application with a file number ending 7212. This Application included the tenants' request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property; and the tenants wish to dispute the landlord's claim for plumbing charges.

As a result, I dismiss the Application (file number ending in 7212) with leave for the tenant to reapply. However, this leave to reapply does not extend any deadlines outlined in the *Residential Tenancy Act (Act)*.

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 One Month Notice to End Tenancy for Cause; the 10 Day Notice to End Tenancy for Unpaid Rent; and the continuation of this tenancy are not sufficiently related to the tenants' claim to suspend or set conditions on the landlord's right to enter the rental unit; repairs to the rental unit; or the landlords' claims for compensation for ant treatment and plumbing repairs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

Both the tenants' other claims and the landlord's other claims are unrelated in that the basis for them 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 One Month Notice or the 10 Day Notice. I exercise my discretion to dismiss the tenants' claim to suspend or set conditions on the landlords' right to enter the rental unit; repairs to the rental unit; and the landlords' claims for compensation for ant treatment and plumbing repairs. I grant both the tenants and the landlords leave to re-apply for these other claims.

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In regard to the tenants' remaining Application for Dispute Resolution (file number ending in 7019), the tenants had applied for more time to submit their application to dispute a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. I note that the evidence submitted by both parties all address the issues in a One Month Notice to End Tenancy for Cause.

I also note that while the tenants did not submit a Tenant Request to Amend an Application for Dispute Resolution form seeking to amend their application to dispute a One Month Notice to End Tenancy for Cause, the tenants' counsel wrote in their written

submission that the tenants applied for the incorrect Notice in error. I confirmed this understanding in the hearing.

As both parties have submitted evidence that is responsive to the One Month Notice to End Tenancy for Cause, I will amend the tenants' Application (file number ending in 7019) to seek more time to file an application to dispute a notice to end tenancy and to cancel a One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to more time to submit their Application to dispute a One Month Notice to End Tenancy; to cancel a One Month Notice to End Tenancy for Cause; and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 66, 67, and 72 of the *Act*.

It must also be decided if the landlords are entitled to an order of possession for unpaid rent and/or cause; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The parties submitted the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 2, 2020 for 1 year fixed term tenancy beginning on September 1, 2020 that converted to a month to month tenancy beginning on September 1, 2021 for a monthly rent of \$1,500.00 due on the first of each month, with a security deposit of \$750.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on December 1, 2021 with an effective vacancy date of December 14, 2021 citing the tenant had failed to pay rent in the amount of \$1,500.00 due December 1, 2021; and
- A copy of a One Month Notice to End Tenancy for Cause issued by the landlord on November 9, 2021 with an effective vacancy date of December 31, 2021 citing the tenants have been repeatedly late paying rent; the tenants or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The notice stipulates the tenant can dispute the Notice by filing an Application for Dispute Resolution within 10 days of receiving the Notice. In the Details of Events section of the notice the landlord wrote:

“Huda and Ban has been harassing and making false accusations causing emotional and psychological toll on other Tenants and Landlords on multiple occasions October 31st 2020, July 2nd 2021, October 8th, November 6th 2021, verbally at the property and through text messages. Failed to pay rent on time repeatedly and refusing to use electronic payment when requested by Landlord. Failed to keep unit in a clean and tidy state as per Residential Tenancy Agreement, causing rodent and pest damages to the unit and affecting other tenants.”

The landlord submitted that they signed the 10 Day Notice on December 1, 2021 and served it to the tenant on December 2, 2021, by posting in on the rental unit door. They provided also that the tenant did pay the rent by giving it to a neighbour on the residential property and that the landlords received it on December 10, 2021 after the neighbour contacted the landlord and told them they had it.

The tenant could not remember receiving the 10 Day Notice or if she did, she could not remember the date she received it or the date when she paid the rent. I note that on December 2, 2021 the tenant submitted her Application for Dispute Resolution with the file number ending in 7212 seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent.

The landlord submitted that the tenant was repeatedly late paying rent and provided documentary evidence showing that the tenant had paid rent late for January, February, April, May, and July 2021 for payments made by e-transfer. The landlord also provided evidence they had issued the tenant two additional 10 Day Notices to End Tenancy for Unpaid Rent – one in August 2021 and one in September 2021.

The landlord provided copies of the emails they sent to the tenant when they issued the 10 Day Notices in August and September. They read, in part:

“Please remember that paying your rent on time is of great importance to use and it must be received on the 1st day of every month”

The tenant testified that they preferred to pay rent in cash but the landlord would not issue receipts for payments and that whenever they tried to pay rent in cash it would take several days to arrange to have the landlord come and collect the rent. They also testified that they did not like using e-transfer, in part because one of the tenants would pay the other tenant in cash and then they would have to go to their bank to deposit the money and it would cause delays.

The landlord also submitted testimony and evidence that the tenant had accused another occupant of the residential property of stealing and that there had been many altercations between the tenants and other occupants of the building.

The landlord also submitted that the tenant was harassing them as well by sending text messages repeatedly at all hours of the day and night in relation to issues of ants and rodents in the rental unit.

The landlord submitted they served the tenant with the One Month Notice by posting it to the rental unit door on November 9, 2021. I note the tenant applied to dispute this notice under the file number ending in 7019 on December 8, 2021.

When asked why they had been late submitting this application, the tenant stated that after they received the One Month Notice they had gone to the Residential Tenancy Branch and that they had been given a piece of paper that they later returned to staff at the branch and that the paper was then lost. The tenant could not recall when this occurred. The tenant also provided that they eventually got assistance from a social worker in applying for dispute resolution.

The tenants' counsel also submitted that because of the wording of the *Act*, the tenant would be deemed to have been served the One Month Notice to End Tenancy on December 1, 2021 and since they applied to dispute the Notice on December 8, 2021 they did so within the 10 day requirement.

Specifically, in his written submission tenants' counsel wrote:

As per the RTB, a landlord must serve the One Month Notice so that it's received:

- At least one month before the effective date of the notice, and
- Before the day that rent is due.

The tenants counsel also submits that in addition, the landlord has not issued this notice to end tenancy in good faith. Specifically, counsel submits that the landlord issued the One Month Notice to End Tenancy for Cause after the tenants most recent complaints as to the conditions of the rental unit. They submit that if the tenant had been repeatedly late paying rent the landlord could have issued a notice earlier and that they only did issue it when they didn't want to respond to the tenant's complaints any further.

Analysis

Section 46 allows a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However, a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

As such, in order for a 10 Day Notice to End Tenancy for Unpaid Rent to be effective it can only be issued the day after rent is due according to the tenancy agreement. As the

tenancy agreement in this case states that rent is due is the first of each month, I find that if the landlord wanted to end the tenancy for unpaid rent for rent that was due on December 1, 2021 the earliest the landlord could issue such a notice would be December 2, 2021.

While I accept the landlords' undisputed testimony that they filled out the form on December 1, 2021 but did not serve it until December 2, 2021 I find that the landlord actually issued the form on December 1, 2021 and as such, I find the 10 Day Notice was issued prematurely. Therefore, I find the 10 Day Notice to End Tenancy for Unpaid Rent issued on December 1, 2021 is of no force or effect and is hereby cancelled.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

The specific wording of Section 47(2) is that:

“A notice under this section must end the tenancy effective on a date that is a) not earlier than one month after the date the notice is received, and b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.”

Section 47(4) allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. Section 47(5) states that if a tenant has received a notice under Section 47 and does not file an application in accordance with Section 47(4) they are conclusively presumed to have accepted the tenancy has ended and must vacate the rental unit.

The evidence before me is that the tenant was the One Month Notice to End Tenancy for Cause on November 9, 2021, by landlord posting it on the door.

Section 90 of the *Act* allows that for a document served by posting a copy to a door or other conspicuous place it is deemed to be received on the third day after it is attached.

If I allow that the tenant did not get it the day the landlord's posted it or the next and allow for the full deeming provision then the tenant is deemed to have received the One Month Notice on November 12, 2021

As such, I find the tenants had until November 22, 2021 to submit an Application for Dispute Resolution seeking to cancel the One Month Notice to End Tenancy for Cause. The tenants' Application was submitted on December 8, 2021. Therefore, I find the tenant has failed to submit her Application for Dispute Resolution within the required 10 days and pursuant to Section 47(5) is conclusively presumed to have accepted the end of the tenancy.

However, Section 66 stipulates that the director may extend a time limit established by the *Act* only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

While the tenant's Application to dispute the One Month Notice was submitted prior to the effective date of the Notice, I find the tenant was entitled to apply to extend the time to file their application.

However, as the tenant's testimony was vague and unclear as to what prevented them from either filing an Application for Dispute Resolution on their own; seeking guidance from an advocate or legal counsel or even their attempt to attend the Residential Tenancy Branch office, I find the tenant has failed to establish any extenuating circumstances that would allow me to grant them an extension of time to submit their Application.

Furthermore, I note that this Application was made on December 8, 2021 which is 6 days after the tenant had submitted her other Application (ending in 7212). As such, the tenant was able to submit an application prior to the date they had submitted this application.

Even if I were wrong in not allowing an extension to submit their Application to dispute the One Month Notice, I am satisfied, on a balance of probabilities, that the landlord has established the tenant has been repeatedly late paying rent. I am satisfied that the landlord has established the tenant was late paying rent at least 7 times since January 2021.

I am also satisfied that the tenants were or should have been aware of the landlords' requirement for the payment of rent on time and its importance to the landlord by the text of the emails they sent to the tenant when they issued the 10 Day Notices in August and September.

While I can understand that the tenant may have had difficulty arranging to have money in their account for e-transfers or to arrange a time for the landlord to pick up the rent, it

is the tenant's responsibility to ensure the payment can be made by e-transfer or by cash directly to the landlord in time for the day in the month it is due.

For clarity, if the tenant knows it will take a few days to contact the landlord to make an arrangement to provide cash then the tenant should be making that arrangement prior to the day that rent is due or, in the case of e-transfers that she has arranged to have sufficient funds to make the payment prior to the day it is due.

As to the tenants' counsel assertion that the landlords issued the One Month Notice to End Tenancy only in reaction to the tenants' complaints, I note that there is nothing in the *Act* that prevents a landlord from issuing a notice for cause or unpaid rent at any time, even when it is issued after a tenant complains about the condition of the rental unit.

As noted above, the tenants had received warnings about paying rent late and in fact previous notices to end the tenancy for unpaid rent I find it would be unfair if the landlord had to wait until a time when a tenant had not recently submitted a complaint about something to issue a notice to end tenancy in such circumstances. I also note that even after the tenant received the One Month Notice they were still late paying rent the very next month.

For the above reasons, I find the One Month Notice to End Tenancy issued by the landlord on November 9, 2021 is valid and enforceable and the tenants must vacate the rental unit.

As a result, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

Conclusion

I find the landlords are entitled to an order of possession effective **March 31, 2021, after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 and grant a monetary order to the landlords in the amount of **\$100.00** comprised of the fee paid by the landlords for this application. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) 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: March 24, 2022

Residential Tenancy Branch