



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, MNDCT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlords provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$12,750.00 pursuant to section 67;

The tenant attended the hearing 25 minutes late. The landlord was represented at the hearing by his agent. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the initial required documents in accordance with the *Act*.

I note s. 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue #1: Notice requesting the date change; tenant's late attendance

On March 1, 2022, the tenant sent a note to the RTB that reads as follows:

I wont be able to assist at the hearing as im out of the country

*And cannot receive Canadian phone from my phone
Please reset for april hearing after april 5, 2022 [reproduced as written]*

I considered the request to adjourn the hearing pursuant to Rule 7.9 “Criteria for granting an adjournment”. Rule 7.9 states ...the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- the oral or written submission 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.

In making my decision to proceed with the hearing in the absence of the tenant, I considered that this was the tenant’s application. She was sent the scheduled date and time by the RTB on January 12, 2022. It was the tenant’s responsibility to make herself available for the hearing. An adjournment would have prejudiced the landlord by delaying an outcome.

The tenant called in at 11:25 a.m. and when I asked her how she managed to call into the hearing if she was out of the country, she dismissed my inquiry stating she was able to access a phone.

The hearing continued until 12:10 p.m. to allow the tenant the opportunity to provide testimony.

Preliminary Issue #2: Consideration of new and relevant evidence

The tenant uploaded 16 documents to the RTB file, one (1) document on March 1 and the remaining fifteen (15) on March 3. The tenant testified that she sent the documents to the landlord by email on Thursday, March 3, 2022, and then delivered the notice requesting a change of date for the hearing to the landlord’s agent on Saturday, March 5, 2022.

Pursuant to Rule 3.17, both parties were provided the opportunity to be heard on the matter of the late evidence

The tenant stated that her husband had a myocardial infarction and was hospitalized so she was unable to upload the documents sooner. She also stated that he had been released from the hospital about two (2) weeks ago.

This evidence was not served to the landlord within 14 days before the date of the hearing. The landlord’s representative waived his right to review the evidence and agreed to proceed with the hearing. The landlord stated that the matter needed to be decided sooner rather than later as the rental unit is vacant.

I reviewed the evidence submitted by the tenant and determined that although the evidence was “new” evidence, it was not “relevant” to the matter before me. I explained to the parties at the

outset, that I would only hear evidence on the One Month Notice for Cause and would sever the remaining claims.

I will allow the March 1, 2022 “date change” request into evidence. As the remaining 15 documents are unrelated to the One Months’ Notice, the matter before me today, the evidence will not be considered.

Preliminary Issue #3: Severing

The tenant applied for various and wide-ranging relief. Pursuant to rule 2.3 of the Rules, 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 general scheduled for one-hour and rule 2.3 is intended to ensure that we can address disputes in a timely and efficient manner.

Upon review of the tenant's application, I find that the primary issue is whether the tenancy will continue or end pursuant to the One Months’ Notice that is the subject of the application. Some of the additional relief is only relevant to the extent that the tenancy continues.

Accordingly, pursuant to rule 2.3 of the Rules, I dismiss the tenant's following claims:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlords provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$12,750.00 pursuant to section 67;

The hearing proceeded on the issue tied to the notice to end tenancy signed December 13, 2021.

Settlement Discussions

The parties have an acrimonious relationship. Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The landlord and tenant stated they were open to negotiating an end to the tenancy. I explained the settlement process to the parties. I told the parties I was prepared to continue the hearing past noon to facilitate a resolution. Discussions continued until 12:10 p.m. during this time, I attempted to assist the parties to resolve an end to the tenancy. These efforts were unsuccessful.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice;

If the tenant's application fails, is the landlords entitled to:

- 1) an order of possession;

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting January 1, 2016. Monthly rent is \$738.00, payable on the first of each month. The tenant paid the landlord a security deposit of \$350.00. The landlord still retain this deposit.

The landlord issued a One Month Notice for Cause dated December 13, 2021. The landlord posted the Notice on the door of the rental unit and sent one copy by registered mail on December 13, 2021. The Canada Post Tracking number was provided by the landlord and is reproduced on the cover of this decision.

The landlord testified that the One Month Notice was issued for repeated late rent payments. Rent is due on the first day of the month. The tenants pay by direct deposit. The attached bank statements show dates and times of the payments. The landlord stated that this has been a long-standing problem and that the landlord is constantly having to ask the tenants to pay the rent. The landlord would call the tenants and be subjected to verbal abuse when he asked for money that was rightfully owed to him.

In November 2021, the GVRD sewer main blew out at the end of the street and both ground level units were flooded with sewage. Both bottom units had to be evacuated and the landlord had to remediate the damage. The tenants moved out on November 22, 2021, because of the damage. The One Month Notice was issued subsequent to the tenants vacating the property. The landlord reiterated that the One Month Notice had nothing to do with the flooding and only to do with them failing to pay rent in a timely manner.

The tenant stated that she and her husband have rented the rental suite for thirteen (13) years. The tenancy started with the prior owners and a new tenancy agreement was signed with the current owner.

The tenant states that the landlords always got their rent albeit sometimes late, but the rent was always paid in full. With the previous landlord, they paid on the 1st and or 2nd of the month. The last couple of years the tenants pay the rent between the 4th and the 7th. Due to extenuating circumstances on one occasion rent was paid on the 16th. The tenant states late rent payments were never an issue in the past, but suddenly became a problem. The tenant believes the landlord wants to increase the rent and that is the true motive behind the Notice.

The tenant acknowledged she received the Notice on December 16, when she picked up her mail from her mailbox. She admits that she was livid and reacted. This resulted in the landlord's agent filing a complaint with the police.

The tenant states that she has not moved back into the suite because it is clear the landlord does not want them as tenants. She states she and her husband are currently living separately – he is living on a property he inherited, and she is and has been staying with various friends until she can secure a rental unit. She and her husband are currently “in transition”.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities I find as follows:

The landlord issued the One Month Notice for Cause on December 13, 2021, sending two (2) copies to the tenant one (1) by registered mail and one (1) posted to the door of the rental unit. Notices posted on a door are deemed served three (3) days after posting and Notices sent by registered mail are deemed served five (5) days after mailing. The tenant stated she received the Notice on the 16th.

Section 47(5) of the *Act* stipulates that a tenant is **conclusively presumed** to have accepted that a tenancy ends on the effective date of a notice received pursuant to s. 47 of the *Act* and that the tenant must vacate the rental unit by that date **unless the tenant disputes the notice within ten days of receiving it**. As the tenant did not dispute the Notice to End Tenancy received on December 16, 2021, within ten days of receiving it. The tenant submitted her application on December 27, 2021 and paid the filing fee on December 31, 2021. Completion of the application was outside the 10 day requirement.

A conclusive presumption is one in which the proof of certain facts makes the existence of the assumed facts beyond dispute. The presumption cannot be rebutted or contradicted by evidence to the contrary. It is important to note that the conclusive presumption set out in s. 47(5) of the *Act* is not that the Landlord has lawful grounds to end the tenancy; rather, it is a conclusive presumption that the tenant has accepted that the tenancy is ending on the effective date of the Notice.

Prior to deciding if the conclusive presumption applies, I must turn my mind to the form and content of the One Month Notice signed and dated December 13, 2021. To be of force and effect, the One Months' Notice **must** meet the formal requirements of s. 52 of the *Act*.

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- a. be signed and dated by the landlord or tenant giving notice
 - b. **give the address of the rental unit**,
 - c. state the effective date of the notice,
 - d. except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - e. when given by a landlord, be in the approved form.

[emphasis added]

I reviewed the One Months' Notice issued by the landlord and note the landlord failed to provide the street name for both the landlord's address and the tenant's address. This information cannot be amended and invalidates the notice. This means that the One Months' Notice is of no force and effect because it does not comply with s. 52 of the *Act*.

The tenant's application to cancel the One Month's Notice is granted. I make no findings on the merits of the claim. As the Notice is invalid because it does not meet the form and content requirements of s. 52, the conclusive presumption does not apply. The landlord is free to re-issue a notice.

I attached a link to the RTB Information Services Department¹ (IS). IS helps both landlords and tenants by providing information and recommendations and assistance. The tenant and/or the landlord may want to contact the IS for support.

Conclusion

The tenant's application to cancel the One Month Notice is successful. The tenants have leave to reapply for the issues that were severed and not heard.

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 7, 2022

Residential Tenancy Branch

¹ <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/contact-the-residential-tenancy-branch?keyword=Information&keyword=services&keyword=RTB>