



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: **OPC, FFL, MNDCL**
 Tenant: **CNC-MT, MNDCT, RP**

Introduction

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

1. An Order of Possession for a One Month Notice to End Tenancy For Cause (the "One Month Notice") pursuant to Sections 55 and 62 of the Act;
2. A Monetary Order for compensation for a monetary loss pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Tenant's cross application pursuant to the Act for:

1. Cancellation of the Landlord's One Month Notice pursuant to Section 47 of the Act;
2. More time to dispute the notice pursuant to Section 66 of the Act; and,
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. An Order for repairs to the unit, I have contacted the Landlord in writing to make repairs but they have not been completed pursuant to Section 32 of the Act.

The hearing was conducted via teleconference. The Landlord, JM, and the Tenant, KA, Translator, MI, and Legal Counsel for the Tenant, AE, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on December 23, 2021. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenant on December 23, 2021 pursuant to Section 88(a) of the Act.

The Tenant served the Landlord with the Notice of Dispute Resolution Proceeding package on January 21, 2022 by email (the “NoDRP package”). The Landlord agrees that email is a permissible way to serve legal documents on them and they confirmed receipt of the NoDRP package. Pursuant to Sections 43(2) and 44 of the *Residential Tenancy Regulation* (the “Regulation”), I find that the Landlord was deemed served on January 24, 2022 in accordance with the Regulation.

The Tenant testified that they served the Landlord with the Tenant’s evidence on March 18, 2022 by Canada Post registered mail. The Tenant referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of some of the Tenant’s evidence, but they said there was no monetary worksheet, so they are unclear if there is more material that is missing. I find that the Landlord was deemed served with the Tenant’s evidence five days after mailing them, on March 23, 2022, in accordance with Sections 88(c) and 90(a) of the Act.

The Landlord served their Notice of Dispute Resolution Proceeding package to the Tenant by posting the notice on his door on January 21, 2022 (the “NoDRP package-OP/MN”). The Tenant confirmed receipt of the NoDRP package-OP/MN. I find that the Tenant was deemed served with the documents for this hearing three days after posting, on January 24, 2022, in accordance with Sections 89(2)(d) and 90(c) of the Act.

The Landlord confirmed that they served the Tenant and the Tenant’s Legal Counsel with the Landlord’s evidence by using a permitted email address for service purposes on March 7, 2022. The Tenant confirmed receipt. I find that the Tenant was deemed served with the Landlord’s evidence on March 10, 2022, in accordance with Sections 43(1) and 44 of the Regulation.

Preliminary Matter

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the One Month Notice, and him seeking more time to prepare his application. I advised that not all of the claims on the Tenant's application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to cancel the One Month Notice and the claim seeking more time to prepare his application at this proceeding. The Tenant's other claims are dismissed with leave to re-apply.

The Landlord indicated a monetary award claim in her application which I find is not sufficiently related to the Order of Possession for Cause claim in her application. I will consider only the Landlord's request for an Order of Possession for Cause and her request for recovery of the application filing fee at this proceeding. The Landlord's other claim is dismissed with leave to re-apply.

Issues to be Decided

For the Landlord:

1. Is the Landlord entitled to an Order of Possession for the One Month Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

For the Tenant:

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. Is the Tenant entitled to more time to dispute the Landlord's One Month Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this periodic tenancy began on January 1, 2020, but she was not the first Landlord for this residential property. The Tenant stated that his tenancy began in 2019. Monthly rent is \$1,200.00 payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant testified that the reasons he needed more time to file his dispute resolution application was because his daughter contracted COVID-19, and because the Tenant stated that his English is not good. The Tenant uploaded an automated message from the BC Centre for Disease Control that his daughter tested positive for COVID-19. The Landlord stated when she served the One Month Notice on the Tenant she spent an hour with the Tenant explaining each page of the document. She said she gave lots of time explaining to a translator person who was there with the Tenant.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has allowed an unreasonable number of occupants in the unit. Additional details noted on the One Month Notice state:

The tenant has divided common areas of the house into bedrooms. The tenant added a wall in the living room and turned the living room into two bedrooms. The tenant divided the attic with a sheet and turned the attic (which is not built to be inhabitable, with only a 4 foot height at the peak, and 2 feet on the sides) into two bedrooms. Tenant also rented out the garage as a bedroom. Tenant admits none of the people residing in the house are related to one another.

1,100 square foot, 2-bedroom house is currently divided into housing for 7 non-related occupants.

The effective date of the One Month Notice was January 31, 2022.

The Landlord said she purchased the home in November 2021. Prior to her purchase, she was alerted to the number of people living in the rental unit. The Landlord said she was advised that the seller would provide notice to the Tenant of the unreasonable number of people living in the unit and that the new Landlord would be conducting an inspection of the unit on December 23, 2021. The Landlord uploaded the Terms and Conditions contained in the purchase and sale agreement for the property. The term about the number of residents states:

The Seller will provide notice to the tenant, at the Seller's earliest opportunity, that there are an unreasonable number of people living on the premises and that the Buyer will be conducting an inspection of the property at 10am on December 23, 2022 [sic] to confirm whether this issue has been remedied.

At the inspection on December 23, 2021, the Landlord testified that the Tenant had not made any changes with the number of people living in the rental unit. She stated there were at least eight people residing in the home – the Tenant and his wife in the main bedroom, one other family member in the second bedroom, two unrelated people sleeping in the living room which was divided by a permanent wall, two unrelated people sleeping in the attic which was divided by a cloth divider, and one unrelated person sleeping in the back laundry room. The Landlord testified that the garage contained over ten mattresses, and the Tenant told the Landlord that sometimes, someone stays in the garage.

The Landlord's reply of what constitutes too many occupants was, *"if anybody is in a room not a bedroom, then that's too many occupants."*

The Landlord is seeking an Order of Possession, and the Tenant is seeking that more be granted to allow him to file his dispute resolution application, and he wants the Landlord's One Month Notice cancelled.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this matter. It states:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

- (c) *there are an unreasonable number of occupants in a rental unit;*
...
- 2) *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.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- (5) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit by that date.*

The Tenant was served with the One Month Notice on December 23, 2021. The One Month Notice complied in form and content pursuant to Section 52 of the Act. The Tenant applied for dispute resolution on January 10, 2022 which was beyond the 10 days after the date the Tenant received the One Month Notice. The Tenant is seeking that more time be granted to him to apply for dispute resolution.

RTB Policy Guideline #36 provides guidance that an arbitrator may extend or modify a time limit established by the Act or Regulation only in exceptional circumstances. The Policy Guideline explains what exceptional circumstances means:

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.

The Tenant's reasons in seeking an extension of time to apply for dispute resolution were because his daughter contracted COVID-19, and because the Tenant stated that his English is not good. The Tenant provided a message from the BC Centre for Disease Control as evidence that his daughter tested positive for COVID-19. The Tenant did not provide any evidence about how his daughter having COVID-19 has negatively impacted himself. Some cases of COVID-19 are very serious, while others are quite manageable. The Tenant did not provide information how this positive result impacted the Tenant's ability to complete his application for dispute resolution within the required time limit.

The Landlord spent an hour with the Tenant explaining each page of the One Month Notice. She said she gave lots of time explaining to a translator person who spoke English and who was there with the Tenant. The Tenant is aware that his English is not strong, and I see this as his warning that he must act quickly when in receipt of a legal notice that was presented and explained to him.

I find the Landlord's reasons do not, on a balance of probabilities, satisfy me that there were exceptional circumstances that would allow me to extend the time limit for the Tenant to apply for dispute resolution. I am not persuaded that the two reasons provided were exceptional and prevented the Tenant from applying on time. I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice which was January 31, 2022. I dismiss the Tenant's application to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenant failed in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

Order of possession for the landlord

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) *the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the One Month Notice complied with the form and content requirements of Section 52 of the Act. I uphold the Landlord's One Month Notice and I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Landlord may deduct the \$100.00 application filing fee from the security deposit due to the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 20, 2022

Residential Tenancy Branch