Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC-MT OLC PSF DRI RP

Introduction

The tenant disputes a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act"). In addition, the tenant applied for more time to dispute the Notice (section 66), for an order requiring the landlord's compliance with the Act (section 62), for an order requiring the landlord to provide services or facilities required by the tenancy agreement or by law (section 62), for an order disputing a rent increase (sections 40 to 43), and for an order for repairs (sections 32 and 62 of the Act).

A dispute resolution hearing was held on Tuesday, May 24, 2022 and the tenant and two representatives for the landlord attended. The parties were affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

It should be noted that the tenant named an individual as the respondent landlord in this dispute. However, the landlord is a society (this is reflected in the tenancy agreement) and as such I have corrected the name of the respondent to the name of the society.

Preliminary Issue: Severing of Issues

Rule 2.3 of the's *Rules of Procedure* requires that claims made in an application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

In this application, it is my finding that the claims for orders related to the provision of services or facilities, and for repairs, are unrelated to the primary claim regarding a dispute of the Notice. As such, those two claims are dismissed with leave to reapply.

Issues

1. Is the tenant entitled to an extension of time to dispute the Notice?
2. If yes, is the tenant entitled to an order cancelling the Notice?
3. Is the tenant entitled to an order pertaining to a disputed rent increase?
4. Is the tenant entitled to an order requiring the landlord to comply with the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began April 1, 2017. Monthly rent is $650.00. There is in evidence a copy of the written tenancy agreement. In addition to the monthly rent, the tenant is responsible for paying a $8.00 hydro levy and $33.60 for Telus. Thus, the total amount the tenant is required to pay is $691.60.

On January 11, 2022, the landlord served the Notice on the tenant by attaching the Notice on the door of the rental unit. Neither party included a copy of the first page of the Notice, but the landlord read off the information that was contained on page one. This information included the names of the parties and that the tenancy would end on February 28, 2022 if the tenant did not dispute the Notice. The tenant made an application for dispute resolution on January 31, 2022.

The landlord (J.R.) testified that rent has always been $650.00, and that it has never been increased. She explained that the tenant had, until mid-2021, been receiving a subsidy from the government which went to paying part of his rent. This subsidy ceased, and the tenant was then required to pay the full rent of $650.00. The landlord further testified that the reason for issuing the Notice (and this is reflected on page two of the Notice, which was tendered into evidence) was that the tenant has never paid the full rent on time since June 2021.

A rent invoice and payment spreadsheet document was submitted into evidence by the landlord. The document indicates an “invoice” amount of $691.60 appearing on the first day of the month beginning on September 1, 2021 until the present day. Various payment amounts are also included, showing payments of $461.60, $391.60, and so forth. There are no full payments of $691.60 made on any date. The landlord testified that the tenant is now thousands of dollars behind in rent.

The tenant testified that, yes, he was receiving a $250.00 per month supplement. This amount was “basically covering expenses.” He testified that the rent then increased to $691.60. Reviewing records and documents, the tenant surmised that rent ought to have been calculated at 30% of his monthly income, which is $1,626.00. He then started paying $487.95, which is about 30% of his income. The organization which provided him with the supplement told him that the landlord cannot just raise the rent.

The tenant further explained that enjoys living where he does, and that he is well-established. He is trying to “play by the rules” and has just started back to work to address any rent arrears that he might owe the landlord.

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.

1. Re Extension of Time to Dispute the Notice

The Notice was served by being posted on the door on January 11, 2022. Pursuant to section 90(c) of the Act, a document being served by this method is deemed to have been received on the third day after it is attached.

A notice to end tenancy under section 47 of the Act (such as this one was) must be disputed within 10 days after the date a tenant receives the notice (section 47(4) of the Act). In this case, the tenant thus had ten days from the date that he is deemed to have received the Notice—January 14—to file an application disputing the Notice. Therefore, he had until January 24, 2022 to file an application to dispute the Notice. The tenant did not file an application until January 31, 2022, almost a week later.

It is noted on the tenant’s Application for Dispute Resolution that he attended to the Residential Tenancy Branch office on January 24, but that he did not submit his application at the time. The tenant writes that “The gentleman at the desk said to take it [the application] home because I didn’t have time to complete the paper file [. . .].”

Section 66 of the Act permits an arbitrator to extend a time limit established by the Act “only in exceptional circumstances.” It is my finding that the staff person at the Residential Tenancy Act ought to have accepted the tenant’s application at the time he visited the office on January 24, 2022.

But for the erroneous advice given by the Residential Tenancy Branch to the tenant, the tenant would not have filed his application late. I find that there was an exceptional circumstance and as such I extend the time limit established by the Act to permit the tenant to apply to dispute the Notice.

2. Re Dispute of Rent Increase

With respect, I disagree with the tenant's argument that the landlord increased rent. The written tenancy agreement, on page two at section 4 (titled "RENT") states the following:

> RENT is $650.00per month. Rent is due and payable in advance on or before the first day of each calendar month. The landlord may increase the Rent payable from time to time by notice in writing to the Tenant (subject to the Act). Rent shall be paid at such place and in such manner as the Landlord may from time to time designate in writing.
> (This rent includes 35% of monthly and eligibility for the BC Safer Program.)

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent.

In this case, while the tenant was certainly receiving a supplement until mid-2021, at no point since the tenancy began in 2017 was the tenant not legally obligated to pay rent in the amount of $650.00. (Not including the additional hydro and Telus charges, which appear to be separate from the rent.) That the amount of rent he had to end up paying after his supplement ceased increased is not, I find, a rent increase. The rent never increased after the supplement stopped coming through.

Given the above, it is my finding that no rent increase has ever occurred. Nor, contrary to the tenant's position that rent is somehow fixed on a percentage basis of his monthly income, is there any term in the tenancy agreement tying rent to 30% of his income.

3. Re Notice to End Tenancy

The Notice in this dispute was issued under section 47(1)(b) of the Act because "the tenant is repeatedly late paying rent". As per *Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent*, three late payments are the minimum number required to support a notice issued under section 47(1)(b).

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

In this dispute, the tenant has only paid part of the rent every month since September 2021. That is, the tenant has been, and continues to be, repeatedly late paying the full amount of rent that is due on the first day of every month. As of the date that the Notice was served, the tenant was late (in that the full amount was not paid) for at least three consecutive months leading up to January 11, 2022.

Taking into consideration all the evidence before me, it is my finding that the landlord has proven, on a balance of probabilities, the ground on which the Notice was issued. Accordingly, the tenant’s application to cancel the Notice is dismissed and the Notice is therefore upheld.

Pursuant to section 55(1)(b) of the Act, having found that the Notice complies with section 52 of the Act in form and content, and having dismissed the tenant’s application, the landlord is hereby granted an order of possession of the rental unit. A copy of the order of possession is issued in conjunction with this decision, to the landlord. It is the landlord’s responsibility to serve a copy of this order on the tenant.

4. Re Order for Landlord Compliance

Section 62(3) of the Act permits an arbitrator to “make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

Based on the oral and documentary evidence before me, I am not persuaded that the landlord has not complied with the Act, the tenancy agreement, or any of the regulations. As such, this aspect of the tenant’s application is dismissed without leave to reapply.

Conclusion

The tenant's application is hereby dismissed, and the landlord is granted an order of possession of the rental unit.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: May 24, 2022

Residential Tenancy Branch