Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, FFT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the "*Act*"):

- An order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed February 2, 2022 (the "One-Month Notice");
- An order pursuant to s. 66 for more time to dispute the One-Month Notice; and
- An order pursuant to s. 72 for return of his filing fee.

T.M. appeared as Tenant and had the assistance of H.B. as his advocate. B.C. appeared as agent for the 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that the Landlord was served with the Notice of Dispute Resolution by way of registered mail and that a support letter comprising his evidence was served on the Landlord on May 24, 2022. The Landlord's agent acknowledges receipt of the Notice of Dispute Resolution and the Tenant's support letter. I enquired whether there were any objections with respect to service and the Landlord's agent confirmed there were none. I find that the Tenant served the Notice of Dispute Resolution in accordance with s. 89 of the *Act*. I further find that pursuant to s. 71(2) of the *Act* the Notice of Dispute Resolution and the Tenant's evidence was sufficiently served on the Landlord and I make this finding based on its acknowledged receipt without objection.

The Landlord's agent indicates that their response evidence was posted to the Tenant's door. The Tenant acknowledges receipt of the same and raised no objection to the

method of service employed by the Landlord. I find that pursuant to s. 71(2) of the *Act* the Landlord's response evidence was sufficiently served on the Tenant and make this finding based on its acknowledged receipt without objection by the Tenant.

Preliminary Issue – Amending the Style of Cause

B.C. is listed as the named respondent whereas the Landlord is listed as a corporate entity in the One-Month Notice.

At the outset of the hearing, I clarified with the Landlord's agents who, in fact, was the Landlord. The Landlord's agent confirmed that the corporate Landlord, as listed in the One-Month Notice, is the correct Landlord. I proposed the style of cause be amended to reflect the Landlord as stated in the tenancy agreement. The Tenant raised no objections with respect to the amendment. Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the Landlord as listed in the One-Month Notice.

Issue(s) to be Decided

1) Should the Tenant be given more time to dispute the One-Month Notice?
2) Should the One-Month Notice be cancelled?
3) If not, is the Landlord entitled to an order for possession?
4) Is the Tenant entitled to the return of his 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 confirm the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on November 1, 2013.
- Rent of $761.00 is due on the first day of each month.
- The Landlord holds a security deposit of $350.00 in trust for the Tenant.

A copy of a written tenancy agreement was put into evidence by the Landlord.

The Landlord's agent advises that the Tenant was served with the One-Month Notice by posting it to the Tenant's door on February 2, 2022. The Landlord provides a photograph showing the One-Month Notice posted to the Tenant's door and a time stamp for the picture showing it was taken on February 2, 2022.

The Tenant denies receiving the One-Month Notice by having it posted to his door on or about February 2, 2022. The Tenant denies seeing the notice posted to his door at all. The Tenant confirms that he was residing at the rental unit in February 2022 and that he was not otherwise away. The Tenant further said that he asked his neighbour whether she noticed the One-Month Notice and he says that she told him that she did not.

The Tenant says that he first received notice of the One-Month Notice on February 18, 2022 by way of text message from the Landlord's agent. The Tenant further indicates that the text message was only a photograph of the first page of the notice and that he first received the complete One-Month Notice when the Landlord served its response evidence at the end of May 2022.

The Landlord's agent advised that he had a conversation with the Tenant on or about February 18, 2022 with respect to whether the Tenant intended to vacate the rental unit as there had been no response. The Landlord's agent says that the Tenant denied receiving the notice and asked for proof that it had been served, which prompted the Landlord to send the text message with the photograph.

The Landlord's agent argued that the Tenant has an unauthorized occupant at the rental unit and speculated that this occupant may have taken the One-Month Notice and discarded it without telling the Tenant. The Tenant denies that he has an unauthorized occupant or any occupant at all.

The One-Month Notice was issued on the basis that the Tenant, or a person permitted on the property by the Tenant, had significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord's agent argued that the Tenant has a history of allowing unauthorized occupants within the rental unit and drew my attention to various warning letters issued from 2019 until 2021. I am told by the Landlord's agent that the Tenant had an injury in 2021 and was unable to access his rental unit, which is on an upper floor. The Tenant confirmed he obtained the assistance of another individual to attend his property to look after the place while he was injured. Over that time, the Landlord says that it received a

series of complaints from other tenants about this other person. The Landlord's agent advised that the complaints related to noise issues and unauthorized use of the parking stalls reserved for the building's other tenants. The Landlord's agent argued that the other individual was residing in the rental unit and causing the disturbances.

The Tenant denies having another occupant though confirmed that the individual had a set of keys for the rental unit while he was injured. The Tenant admitted that in the spring of 2021, there were issues related to parking and that he asked the other individual to return his keys. It was argued that any issues have since resolved. The Tenant says that the other individual still attends his rental unit as a guest and that she has rarely stayed overnight.

The Tenant indicated that he had only received a noise complaint from the tenant in the rental unit directly beneath his. I was told by the Tenant that the other individual was visiting with her young child and that the tenant beneath him raised issue with noise on that occasion. There appears to have been a second incident and the Tenant introduced the other tenant to the child. A third occasion took place in which the other tenant came to the Tenant's door looking to see the child and the Tenant tells me that the other individual was intoxicated on that occasion.

The Landlord's agent denies that the complaints are related to a single instance and to a single individual. The Landlord's agent argued that the Landlord has an obligation to issue warnings and enforce on the right of other tenants to the quiet enjoyment of their rental or risk losing tenants. In the weeks immediately preceding the One-Month Notice being issued, complaints were made with respect to music late at night, the sound of a child running around, and issues related to parking. The Landlord provides no evidence in the form of complaints from other tenants as part of its evidence.

The Tenant emphasized that there is no issue and pointed me to a letter written by the tenant at his neighbouring rental unit, which indicates that she was living next door for 7 years and found him to be a courteous, kind, and respectful neighbour.

Analysis

The Tenant applies for more time to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing

an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

Under s. 66 of the *Act*, a time limit imposed by the *Act* can be extended but only under exceptional circumstances. The burden of proving that s. 66 applies rests with the party advancing the claim.

Strictly speaking, I find that the Tenant is not advancing an argument for the application of s. 66 of the *Act*. The Tenant says he received the One-Month Notice by way of text message on February 18, 2022 and, having regard to Rule 2.6 of the Rules of Procedure and the information on file, he filed his application on February 24, 2022. Essentially, the question is when the One-Month Notice was served and received. If I accept the Tenant's evidence that he received the One-Month Notice on February 18, 2022, then he would have filed within the 10 days permitted to him by s. 47(4) of the *Act*.

Section 88 of the *Act* permits the Landlord to serve the One-Month Notice by posting it to the Tenant's door. I have reviewed the photograph provided by the Landlord, which clearly shows the One-Month Notice, the unit number for the Tenant's rental unit, and is date stamped for February 2, 2022. The Landlord's agent advised he posted the One-Month Notice to the Tenant's door. I have no reason to doubt the One-Month Notice was served as described by the Landlord as the Tenant simply states that he did not receive it. I find that the Landlord served the One-Month Notice in accordance with s. 88 of the *Act* by posting it to the Tenant's door on February 2, 2022.

When a document is served under in accordance with the *Act*, s. 90 establishes a series of deemed receipt provisions setting different time periods depending on the method of service. Presently, s. 90(c) of the *Act* would apply and sets out that a document is deemed to have been received three days after it is posted to a door.

Policy Guideline 12 provides guidance on the service provisions of the *Act* and, in particular, the deemed service provisions under s. 90. Policy Guideline 12 clearly sets out that s. 90 establishes an evidentiary presumption that a document is received at the end of the relevant period. The presumption can be rebutted when fairness warrants it. The Policy Guideline provides the following examples of when it would be unfair to apply s. 90:

- There is a postal strike, and a document was served via registered mail.

- A party is away from home on vacation.

Policy Guideline 12 is clear that "[a] party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received."

Presently, the Tenant provides a bare assertion that he did not receive the One-Month Notice until February 18, 2022. He further asserts that he never took notice of the One-Month Notice on his door and that he was at the rental unit in February 2022 when it was posted to his door. The Tenant further denied that an occupant lives at the rental unit, which directly contradicted the hypothesis of the Landlord's agent that the other occupant may have removed the One-Month Notice. The rental unit is on an upper floor and only has indoor access. It is not likely that the elements conspired to remove the One-Month Notice from the door by way of wind or the like. Perhaps an unknown third-party removed the notice. However, this is purely speculative.

I am left with a bare assertion denying receipt of the One-Month Notice, this despite my finding that the Landlord posted it to the Tenant's door on February 2, 2022 and the Tenant telling me he was not away from home or otherwise unable to take note of the notice posted to his door. Given this contradictor information, I am unable to find that the deeming provision of s. 90(c) of the *Act* ought not apply due to unfairness.

The Landlord is entitled to serve the One-Month Notice by posting it to the Tenant's door and I am not inclined to permit the Tenant to frustrate service without evidence that he received it at another date, particularly when there is clear evidence of service on February 2, 2022. I find that pursuant to s. 90 of the *Act* that the Tenant is deemed to have received the One-Month Notice on February 5, 2022.

As mentioned above, I do not find that s. 66 is applicable given the circumstances of this case. However, I have considered it and take note of Policy Guideline 36, which provides guidance on what can be considered exceptional circumstances. In the event I am incorrect with the above conclusion, I would have found that the Tenant has not satisfied me that s. 66 ought to apply. He has provided no evidence of any exceptional circumstances at all. Policy Guideline 36 provides examples, including being hospitalized or otherwise incapable of filing an application. The Tenant provided no evidence on these points, only that he received the notice on February 18, 2022 without any further evidence other than a bare assertion. As stated by Policy Guideline 36, a reason without any force of persuasion in the form of evidence is merely an excuse. The Tenant's claim under s. 66 is dismissed.

Given that the Tenant is deemed to have received the One-Month Notice on February 5, 2022, I find that he failed to file his application disputing the One-Month Notice within the 10 days permitted by s. 47(4) of the *Act*. As mentioned above, the Tenant filed his application on February 24, 2022. Therefore, s. 47(5) of the *Act* is engaged and the Tenant is conclusively presumed to have accepted the end of the tenancy on the effective date set out in the One-Month Notice, which was March 31, 2022.

As the Tenant is conclusively presumed to have accepted the end of the tenancy, I dismiss the Tenant's application to cancel the One-Month Notice without leave to reapply. Section 55(1) of the *Act* 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 and find that it complies with the formal requirements of s. 52 of the *Act*. I, therefore, grant the Landlord an order for possession. As the effective date has passed, the Tenant is to provide vacant possession of the rental unit within 2-days of receiving the order for possession.

Conclusion

The Tenant incorrectly advanced an application under s. 66 of the *Act*. No exceptional circumstances were disclosed, and the Tenant advanced a bare denial of receiving the One-Month Notice. The Tenant's bare denial is insufficient to displace the deemed service provision of s. 90 and I deem that the Tenant received the One-Month Notice on February 5, 2022.

The Tenant is conclusively presumed to have accepted the end of the tenancy as per s. 47(5) of the *Act*. Accordingly, his application to cancel the One-Month Notice is dismissed.

The Landlord is entitled to an order for possession under s. 55(1) of the *Act*. I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

As the Tenant was unsuccessful in his application, I find that he is not entitled to the return of his filing fee under s. 72 of the *Act*. He shall bear his own costs for his application.

It is the Landlord's obligation to serve the order for 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: June 06, 2022

Residential Tenancy Branch