Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPC, FFL

Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, the landlord's CEO, property manager and director of property services attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Severance

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 "One Month Notice") and the continuation of this tenancy is not sufficiently related to any of the landlord's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The landlord's other claims are unrelated in that the basis for them rests largely on 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. I exercise my discretion to dismiss all of the landlord's claims with leave to reapply except the claims seeking an Order of Possession for cause and authorization to recover the filing fee.

Preliminary Issue- Service of Application for Dispute Resolution and Evidence

The CEO testified that the tenant was served with the landlord's application for dispute resolution and first evidence package via registered mail but could not recall on what date. The tenant testified that he received the above documents on April 13, 2022. I find that the tenant was served with the above documents in accordance with sections 88 and 89 of the *Act.*

The CEO testified that the tenant was served with the landlord's amendment, which sought to increase the monetary claim for unpaid rent and the landlord's second evidence package via posting on the tenant's door on July 15, 2022. The tenant testified that he received the above documents on July 16, 2022.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the hearing.

I find that the landlord's amendment and second evidence package were served on the tenant one clear day before the hearing. I find that this substantial delay prejudiced the

tenant's opportunity to review and respond to the landlord's evidence and that the landlord clearly breached Rule 3.14 by serving less than 14 clear days before the hearing. Pursuant to my above findings, the landlord's amendment and second evidence package are excluded from consideration.

Both parties agree that the tenant personally served the landlord with his evidence on July 8, 2022. I find that the tenant's evidence was served on the landlord in accordance with section 88 of the *Act* and is accepted for consideration.

Preliminary Issue- Service of One Month Notice to End Tenancy

The CEO testified that the tenant was served with the One Month Notice via registered mail on December 22, 2021. The CEO provided the tracking number in the hearing which matched the Canada Post delivery confirmation receipt entered into evidence by the landlord. The confirmation delivery receipt states that the registered mail was successfully delivered to the tenant on January 4, 2022. The tenant's signature is included on the delivery confirmation receipt.

The tenant testified that he received the above registered mail package, but it only contained warning letters from the landlord, and did not contain the One Month Notice.

The CEO testified that the December 22, 2021 mailing contained the One Month Notice and the warning letters, which evidenced the issues cited in the One Month Notice. The CEO testified that the three warning letters, all dated November 26, 2021 were originally served on the tenant on November 26, 2021. The November 26, 2021 warning letters were entered into evidence.

The One Month Notice dated December 22, 2021 was entered into evidence and states that the tenant must vacate the subject rental property by January 31, 2022. The tenant did not file an application with the Residential Tenancy Branch to dispute the One Month Notice. The One Month Notice states the grounds for ending the tenancy.

The CEO and the tenant provided contradicting evidence as to what documents were included in the December 22, 2021 registered mailing received by the tenant on January 4, 2022.

I find the landlord's testimony to be more compelling and reasonable than that of the tenant. I find that it is unlikely that the landlord would draft three warning letters and then send them to the tenant approximately one month after they were drafted. I find it more likely than not that the landlord served the tenant with the three warning letters dated November 26, 2021 on or around the date they were drafted and that they were again sent via registered mail on December 22, 2021 as evidence to support the One Month Notice also served in the December 22, 2021 package. I find that the tenant received the One Month Notice on January 4, 2022, in accordance with section 88 of the *Act.*

Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act* because it is:

a) signed and dated by the landlord,
b) gives the address of the rental unit,
c) states the effective date of the notice,
d) states the grounds for ending the tenancy, and
e) is in the approved form.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Section 55(2)(b) of the *Act* states:

> A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
>
> > (b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The tenant did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted the end of the tenancy and that the effective and or corrected effective date(s) of the One Month Notice have passed. Pursuant to section 55(2)(b) of the *Act,* the landlord is entitled to a two-day Order of Possession. The landlord will be given a formal

Order of Possession which must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain $100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55(2) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72 of the *Act,* the landlord is entitled to retain $100.00 from the tenant's security deposit.

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: July 18, 2022

Residential Tenancy Branch