



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, DRI, FFT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant applied for the following:

- an order cancelling a One Month Notice to End Tenancy for Cause pursuant dated February 25, 2022 (“1 Month Notice”) pursuant to section 47;
- an order regarding a disputed rent increase pursuant to section 43; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

An agent (“KG”) for the Landlord and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlord in-person at the Landlord’s office on March 16, 2022. KG acknowledged the Landlord received the NDRP. I find the NDRP Package was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Landlord did not serve the Tenant, or submit to the Residential Tenancy Branch, any evidence for the hearing.

Preliminary Matter – Non-Service of Tenant’s Evidence on Landlord

The Tenant filed evidence with the Residential Tenancy Branch (“RTB”). The KG stated the Landlord did not receive any evidence from the Tenant. The Tenant could not recall whether he served his evidence on the Landlord. KG stated the Landlord did not receive any evidence from the Tenant.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office *not less than 14 days before the hearing*.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

[emphasis in italics added]

The Tenant has not satisfied me that he served his evidence on the Landlord. As a result, the Landlord did not have the opportunity to consider and respond to that evidence. As the Tenant has not complied with Rule 3.14, I find the Tenant’s evidence submitted to the RTB is not admissible for the hearing except for the copy of the 1 Month Notice. Although the Tenant’s evidence is not admissible, I told the Tenant that he may testify as to the contents of that evidence.

Preliminary Matter – Non-Service of Tenant’s Amendment on Landlord

The Tenant prepared, and filed with the RTB, an amendment (“Amendment”) to the Application to dispute a rent increase that is above the amount allowed by law pursuant to section 43 of the Act. However, KG stated the Landlord was not served with the Amendment. The Tenant could not recall whether he served the Amendment on the landlord.

Rule 4.6 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”) states:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by Residential Tenancy Branch Rules of Procedure. These Rules of Procedure take effect at 12:00am PST on April 25, 2022. The applicant must serve the amendment in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) *not less than 14 days before the hearing*. See also Rule 3 [Serving the application and submitting and exchanging evidence].

[emphasis in italics added]

The Tenant did not demonstrate to my satisfaction that the Amendment was served on the Landlord in accordance with Rule 4.6. As such, I order the claim for an order regarding a disputed rent increase made in the Amendment be dismissed with leave to reapply.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- Is the Tenant entitled to recover the filing fee of the Application from the Landlord?
- If the 1 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or

arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

KG stated the original tenancy commenced on May 1, 2018 and was between the former landlord and another person ("CP") who passed away. The Tenant stated CP was his common law wife. KG stated the former landlord did not do anything to amend the tenancy agreement to add the Tenant as a tenant. The Tenant stated he was the executor of CP's estate but did not submit any evidence to corroborate his testimony. The Tenant stated he dealt with the former landlord in respect of becoming a tenant on the tenancy agreement but the former landlord dealt with things very slowly. The Tenant submitted that an amendment was made orally with the former landlord and that he has been paying the rent since that time without any question of his status as a tenant by either the former landlord or the Landlord under the tenancy agreement made between the former landlord and his deceased common law spouse. The Tenant stated he paid rent to the former landlord and continues to pay rent to the Landlord. KG did not dispute the Tenant's testimony that the Tenant is paying rent to the Landlord and that the Landlord has been accepting the rental payments from the Tenant.

The 1 Month Notice states the following causes for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant of the landlord;
 - put the landlord's property at significant risk engaged in illegal activity that has, or is likely to damage the landlord's property;
 - has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord;
- Tenant has not done required repairs of damage to the rental unit
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so

The 1 Month Notice provides the following details for the causes for ending the tenancy:

The Landlord has requested for the Tenant to remove the courtyard structure, remove the vegetable garden and cease using the courtyard to store personal belongings. This has not been remedied within a reasonable period of time after

written notice to do so. The Tenant is using the backyard as storage which could attract pests thereby adversely jeopardizing other Tenant's health and putting the property of the landlord at significant risk. The Tenant is also using the property to sell tobacco and potentially other substances and as a result has many visitors during the night.

KG stated that many people come and go to the rental unit during the day and night. KG stated other tenants of the residential property are afraid of giving witness statements or testifying. KG did not submit any evidence, or call any witnesses, to corroborate her testimony.

The Tenant stated he is not selling anything illegal from the residential property.

Analysis

Rule 6.6 of the RTB Rules states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. *For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.*

[emphasis in italics added]

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above the testimony of the other party to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under similar circumstances.

Subsections 47(1)(d)(i), 47(1)(d)(ii), 47(1)(d)(iii), 47(1)(e)(i), 47(1)(e)(ii), 47(1)(e)(iii), 47(1)(g) and 47(1)(h) and subsections 47(2) through 47(5) of the Act state:

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

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[...]

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

[...]

(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.

I note that subsections 47(1)(d)(ii), 47(1)(d)(ii) and 47(1)(e)(ii) use either the adjective “significantly”, “unreasonably”, “seriously” or “adversely” as part of the cause stated in those subsections. This means a landlord must prove the activity, behavior or misconduct of the tenant must be sufficient to warrant the eviction of the Tenant.

KG stated the 1 Month Notice was served on the Tenant in-person on January 24, 2022. Pursuant to section 47(4) of the Act, I find the Tenant had until February 3, 2022, to make an application for dispute resolution to dispute the 1 Month Notice. At the hearing, I mistakenly thought the Tenant made the Application on February 11, 2022. After the hearing, I determined the Application was actually filed by the Tenant with the Residential Tenancy Branch on February 1, 2022. As such, the Tenant made the Application within the 10-day dispute period permitted by section 47(4) of the Act.

KG stated the tenancy agreement was between the Landlord and the Tenant’s common law wife. The Tenant claimed that he was the executor for the estate of his deceased wife but he did not provide a copy of the will or a copy of the grant of probate from the court of competent jurisdiction. The Tenant stated he has been paying the rent to both the predecessor landlord and the Landlord. I find that, by continuing to accept rent from the Tenant after the Tenant’s common law wife died, the Landlord accepted the Tenant as a tenant under the existing tenancy between the Landlord and the Tenant’s deceased wife. As such I find there is a tenancy agreement between the Landlord and Tenant and the Tenant has all of the rights and obligations under that tenancy agreement.

KG stated the Tenant, or a person permitted on the residential property has engaged an illegal activity. *Residential Tenancy Policy Guideline 32* (“PG 13”) provides guidance on relevant issues such as the meaning of “illegal”, which may constitute “illegal activity”

and circumstances under which termination of the tenancy may be considered. PG 13 states in part:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. would justify termination of the tenancy.

For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy. On the other hand, a chemical drug manufacturing operation (e.g., methamphetamine lab), would form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.

In order to show cause under subsections 47(1)(e)(i), 47(1)(e)(ii) or 47(1)(e)(iii), the Landlord must demonstrate two things. The Landlord must firstly demonstrate there has been an illegal activity by the Tenant on the residential property and, if that is demonstrated, then the Landlord must demonstrate it has adversely affected the quiet enjoyment, security and safety of another occupant of the residential property.

KG alleged the Tenant has been selling tobacco from the rental unit. The Tenant denied it. KG did not submit a legible copy of the relevant statute or bylaw to demonstrate the Tenant was engaged in an illegal activity nor did KG submit any evidence, or call any witnesses, to corroborate her testimony of such illegal activities. As such, I find the

Landlord has not, on a balance of probabilities, established there was cause under subsections 47(1)(e)(i), 47(1)(e)(ii) or 47(1)(e)(iii) of the Act.

KG stated the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant and put the landlord's property at significant risk. The Tenant denied these allegations. KG did not submit any evidence, or call any witnesses, to corroborate these accusations. As such, I find the Landlord has not, on a balance of probabilities, established there was cause under subsections 47(1)(d)(i), 47(1)(d)(ii) or 47(1)(d)(iii) of the Act.

KG stated the Tenant has not repaired damage to the rental unit within a reasonable time after being requested to do so by the Landlord. KG did not submit any evidence that the Landlord has served the Tenant with a demand that the Tenant repair damage to the rental unit. As such, I find the Landlord has not, on a balance of probabilities, established there was cause under subsection 47(1)(g) of the Act.

KG stated the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. KG did not submit any evidence that the Landlord has served the Tenant with a written demand that the Tenant correct the situation within a reasonable time. As such, I find the Landlord has not, on a balance of probabilities, established there was cause under subsection 47(1)(h) of the Act.

Based on the foregoing, I find that the Landlord has not met the burden of proof to demonstrate there was cause for ending the tenancy pursuant to subsections 47(1)(d)(i), 47(1)(d)(ii), 47(1)(d)(iii), 47(1)(e)(i), 47(1)(e)(ii), 47(1)(e)(iii) or 47(1)(g) of the Act. As such, I allow the Application and order the 1 Month Notice cancelled. The tenancy continues until it is ended in accordance with the provisions of the Act.

As the Tenant has been successful in the Application, I award the Tenant the filing fee of \$100.00 for the Application pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to withhold \$100.00 from his monthly rent on a one-time basis in satisfaction of this amount. The Landlord may not serve the Tenant with a Ten Day Notice for Unpaid Rent and/or Utilities when the Tenant makes the \$100.00 deduction from his rent.

Conclusion

I allow the Application to cancel the 1 Month Notice. I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in the Application, I award the Tenant the filing fee of \$100.00 for the Application. I authorize the Tenant to withhold this amount on a one-time basis from his monthly rent on a one-time basis in satisfaction of this amount.

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