



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310068966: CNC, MNDCT, RR, RP, RPP, FFT

File #910070618: OPC, FFL, OPN

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on March 30, 2022 (the “One-Month Notice”);
- An order for monetary compensation for monetary loss pursuant to s. 67;
- An order for repairs pursuant to s. 32;
- An order for the return of personal property pursuant to s. 65;
- An order for a rent reduction pursuant to s. 65; and
- Return of their filing fee pursuant to s. 72.

The Landlord files a cross-application and amendment seeking the following relief under the *Act*:

- An order of possession pursuant to s. 55 after issuing the One-Month Notice;
- An order of possession pursuant to s. 55 pursuant to a mutual agreement to end tenancy; and
- Return of his filing fee pursuant to s. 72.

R.R. and S.E. appeared as the Tenants. They were represented by T.Y. as their advocate. D.B. appeared as 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 Landlord advised having served the Tenants with his application materials. The Tenants acknowledge receipt of the application package, but deny receipt of any evidence. The Landlord provided a copy of the One-Month Notice to the Residential Tenancy Branch as evidence, the Tenant's advocate raised no issue with respect to its inclusion as the Tenants acknowledged its receipt. Accordingly, I find that pursuant to s. 71(2) of the *Act* the Tenants were sufficiently served with the Landlord's application materials.

Preliminary Issue – Service of the Tenants' Application

The Tenants advise that they served their application and evidence by posting it to the Landlord's door on April 22, 2022.

The Landlord denied receiving the Tenants application materials. He testified that he was attended the Residential Tenancy Branch's office on April 22, 2022 and could not have received the Tenant's evidence.

The Tenants indicate that they posted their application package to the door and contacted the Landlord to notify him that it had been served. They indicate that they checked the door five minutes after attaching the application package and found that it was gone. Photographs were provided by the Tenant confirming the method of service.

The Landlord confirmed that he did receive a package but did not open it. The Landlord argued that there might have been anthrax in the package.

I note that posting evidence materials to a door is not an approved form of service under s. 89(1) of the *Act*. This method of service is only permitted under s. 89(2) of the *Act* when a landlord applies for an order of possession, either under ss. 55, 56, or 56.1.

On balance, I am satisfied that the Tenants posted their application materials to the Landlord's door on April 22, 2022 as indicated at the hearing and supported by their photograph evidence of service. The Landlord acknowledged receiving the package, though denies service on the basis that he did not open the package, arguing it could have contained anthrax. I find the Landlord's position that he was not served because he did not open the package to be ridiculous. It is a transparent attempt by the Landlord to deny service by reliance on a juvenile excuse that it may have contained anthrax.

I find that since there were cross-applications, it would be inappropriate to hold the Tenants to the methods of service under s. 89(1) of the *Act* given that the Landlord has applied for an order of possession under s. 55. Based on the Landlord's acknowledged receipt of the package, I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served with the Tenants application materials as he acknowledged receipt of the application package.

Preliminary Issue – Tenants' Claim

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The primary issue in both applications is related to whether the tenancy will end or continue based on the enforceability of the One-Month Notice. Though some of the facts may be shared between the claims, the monetary claims are largely from the enforceability of the One-Month Notice.

The Tenants advocate indicated that the Tenant's application for repairs could be severed as they had made a separate application that is coming on for hearing in October 2022. The Tenant's claim under s. 32 of the *Act* is therefore severed from the application.

I indicated that we would likely have insufficient time to deal with all the aspects of the Tenants claims and that I wanted submissions to be focused on the enforceability of the One-Month Notice, though left open the possibility of speaking to the Tenants' monetary claims if time permitted. The hearing concluded after 55 minutes and only submissions were made on the issue of the One-Month Notice.

Pursuant to Rule 2.3 of the Rules of Procedure, the Tenants claims under ss. 67 (monetary order), 65 (return of personal property), and 65 (rent reduction) are severed from the application. These aspects of the claim are dismissed with leave to reapply.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) Is the Landlord entitled to an order of possession?
- 3) Are either parties entitled to the return of their 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 issues in dispute will be referenced in this decision.

The Tenant's advocate advised that there is no written tenancy agreement. The Tenants say that rent of \$1,000.00 plus utilities is due on the 3rd day of each month. The Landlord says that rent of \$1,000.00 plus \$200.00 for utilities is due on the 1st day of each month. The parties confirmed no security deposit had been paid.

The Tenants advise that the tenancy began on June 15, 2015 and that they had previously been tenants with the Landlord from 2010 to 2012. The Landlord could not recall specifically when the tenancy began. The Tenants advised that they are seniors, the Landlord also emphasized he was a senior as well.

The Landlord testified that the One-Month Notice was personally served on the Tenants and posted to their door. According to the Landlord, the Tenants refused to accept the One-Month Notice and that he needed to post it to the door. The Landlord says that served the One-Month Notice on March 30, 2022. The Tenants acknowledge personally receiving the One-Month Notice on March 30, 2022 and deny it was ever posted to their door.

The One-Month Notice, which was put into evidence, lists the following as grounds for ending the tenancy:

- Repeated late rent payments;
- The Tenants or person permitted on the property by the tenants 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;
- The Tenants or person permitted on the property by the tenants has caused extraordinary damage to the rental unit;
- The Tenants have not done required repairs to the rental unit;

- The Tenants have breached a material term of the tenancy agreement and not corrected it after being provided with notice to do so.

The Landlord testified that he is terrified of the Tenant R.R.. He variously alleged that he has been harassed and terrorized by the Tenants, though provided little in the way of specifics. He says that they hide behind L., a police officer. He further alleges that R.R. says he is proud to be the father of a Hells Angels member. Other allegations are made by the Landlord that the Tenants are using his name to gamble, though it was unclear how this related to the One-Month Notice.

I enquired about the allegation that the Tenants are repeatedly late paying rent. The Landlord says that rent is paid on time and that was not an issue. The Landlord argued that the Tenants did not pay the electricity bills or would pay what they wanted to pay.

The Landlord says that he resides in the basement suite at the residential property. He says that the Tenants turned off the heat and this caused there be to an increase of moisture and black mold in the basement. He further alleges that the Tenants set up an electric heater underneath the thermostat to prevent the furnace from turning on.

The Landlord provides no documentary evidence. The Landlord made no submissions on how the Tenants breached a material term of the tenancy agreement.

The Tenant's advocate emphasized that the Landlord provided little evidence to support his various allegations. She denies that the Tenants breached a material term of the tenancy agreement, emphasizing that there is no written tenancy agreement. She indicates that contrary to the One-Month Notice, the Landlord admitted at the hearing that the Tenants paid rent on time. It was further indicated by the advocate that there is no evidence of illegal activities, that the house is older and may allow noise to travel more easily, and that the Tenants wear slippers to mitigate the noise of their foot fall.

The Tenant's advocate emphasized there is no evidence of extraordinary damage. She says that the to the extent that any maintenance issues it is a direct result of the Landlord's personal belongings and a direct result of the breach of the Landlord's obligation to maintain the property.

The Tenant's advocate argued that the Landlord's conduct is vexatious. She indicates that the Tenants have never signed a mutual agreement to end tenancy and there is no evidence of the same put forward by the Landlord.

The Tenants confirm they continue to reside within the rental unit.

Analysis

The Tenants seek an order cancelling the One-Month Notice. The Landlord seeks an order of possession. Both seek the return of their filing fee.

Based on the undisputed evidence of the parties, I find that the One-Month Notice was personally served on the Tenants in accordance with s. 88 of the *Act*. The Tenants confirm receiving the One-Month Notice on March 30, 2022.

I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

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. Pursuant to s. 47(4) of the *Act*, a tenant may file an application disputing the notice but must do so within 10 days of receiving it. This deadline is clearly specified at the top of the One-Month Notice, which states the following:

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application disputing the One-Month Notice on April 11, 2022, which is the date the Tenants paid their application fee and filed their with the Residential Tenancy Branch.

Based on the date the Tenants received the One-Month Notice, they had until April 9, 2022 to file their application. The Tenants did not file an application for more time to dispute the notice under s. 66 of the *Act* nor did they provide any submissions on this

point. By filing their application on April 11, 2022, the Tenants failed to file within the 10 days permitted to them under s. 47(4) of the *Act*.

I find that the Tenants failed to file their dispute in accordance with the 10-day time limit imposed by s. 47(4) of the *Act*. Given this, I find that s. 47(5) of the *Act* is engaged such that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date in the notice and ought to have vacated the rental unit on that date.

As the Tenants are conclusively presumed to have accepted the end of the tenancy, I dismiss their application to cancel the One-Month Notice.

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. As the Tenants continue to reside within the rental unit, I find that the Landlord is entitled to an order of possession.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession and states the following:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If

there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

I did not canvass the parties' positions with respect to the effective date of an order of possession. As mentioned in Policy Guideline #54, the standard course is for an order of possession to be effective two days after it is received by the tenant, though that is ultimately in my discretion.

I note that the effective date of the One-Month Notice was April 30, 2022, which has long since passed. However, the Landlord admits that the Tenants have paid rent and that is not in issue. Further, the Tenants have been residing in the rental unit since 2015. There is no dispute that the Tenants are both seniors.

I find that it is appropriate to deviate from the standard course and I make the order of possession effective on August 31, 2022. I do so because the Tenants have paid rent for August 2022 and have been tenants at the rental unit for a substantial period of time. The additional time will permit them opportunity to find alternate accommodation.

Dealing with the request for filing fees, I do not grant the Tenants their filing fee as they were not successful in their application.

Looking at the Landlord's request for a filing fee, I found the Landlord to be argumentative during the hearing. On more than one occasion, I needed to be reprimanded the Landlord's of foul language, some of which was directed toward the Tenants. Such conduct during a hearing is entirely unacceptable. The Landlord was not forthcoming with respect to receipt of the Tenants evidence and advanced the argument that the evidence package could have contained anthrax, which is patently absurd.

Further, though the tenancy is coming to an end, this is based on the Tenants failure to file on time. It was not due to the Landlord's submissions. Though generally the successful party is entitled to the return of their filing fee, such orders are discretionary. I decline to grant the Landlord his filing fee based on the factors mentioned above.

Conclusion

The Tenants claim to cancel the One-Month Notice is dismissed as they failed to file their application within 10 days of receiving the notice. The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. I order that the Tenants give vacant possession of the rental unit to the Landlord by no later than **1:00 PM on August 31, 2022**.

The Tenants claims under ss. 65 and 67 of the *Act* are dismissed with leave to reapply. The Tenants claim under s. 32 of the *Act* for repairs is no longer relevant and is dismissed without leave to reapply.

The Tenants were unsuccessful in their application. I find that they are not entitled to the return of their filing fee. Their claim under s. 72 of the *Act* is dismissed without leave to reapply.

I decline the Landlord's request for return of his filing fee. His claim under s. 72 of the *Act* is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenants do not comply with the order of 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: August 08, 2022

Residential Tenancy Branch