Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

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") to seek an order cancelling a One Month Notice to End Tenancy for Cause dated March 31, 2022 ("1 Month Notice") pursuant to section 47 of the Act.

The Tenant, two advocates for the Tenant ("AS" and "JS"), the Landlord's agent ("AM") and the Landlord's legal counsel ("AC") 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 serve the Notice of Dispute Resolution Proceeding and his evidence ("NDRP Package") on the Landlord by registered mail on April 22, 2022. The Tenant submitted into evidence a Canada Post receipt and the tracking number for service of the NDRP Package. AC acknowledged the Landlord received the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Amendment of Application to Remove and Add Respondent

At the outset of the hearing, I noted the Tenant named another person ("CC") as the respondent even though the 10 Day Notice stated the name of the Landlord was KCR. When I asked AC who the legal owner of the rental unit was, she stated it was KCS. The Tenant then requested that I order the Application to be amended to name KCS as the respondent and to remove CC as the respondent. AC consented to the Tenant's request.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states ("RoP"):

> **4.2 Amending an application at the hearing**
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> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.
>
> If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Tenant's could reasonably be anticipated, and with the consent of AC, I order the Application to be amended by removing CC as a respondent and adding KCR as the respondent.

Preliminary Matter – Failure of Landlord to Service Evidence on Tenant

When I asked how the Landlord's evidence was served on the Tenant, AC stated the Landlord did not serve any evidence on the Tenant even though it had been filed with the Residential Tenancy Branch.

Rules 3.15 and 3.19 of the *Residential Tenancy Branch Rules of Procedure* state:

> **3.15 Respondent's evidence provided in single package**
>
> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
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> **3.19 Submitting evidence after the hearing starts**
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> No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will:
>
> a) specify the date by which the evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC Office and whether it must

be served on the other party; and Residential Tenancy Branch Rules of Procedure; and

b) provide an opportunity for the other party to respond to the additional evidence, if required.

In considering whether to admit documentary or digital evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence.

AC requested I admit the Landlord's evidence for the hearing. The Tenant objected to the admission of the Landlord's evidence as he has not seen it and he felt it may be biased and prejudicial to him. I find the Landlord had more than 3 months to serve the Tenant with the Landlord's evidence and failed or neglected to do so. As such, I find the Landlord's evidence is not admissible for the hearing.

Preliminary Matter – Tenant's Personal Possessions

The Tenant stated he had mostly vacated the rental unit on July 12, 2022 but some of his personal possessions still remained in the rental unit. The Tenant stated he returned to the rental unit to retrieve the balance of his personal possessions on July 16, 2022 and discovered the Landlord had changed the locks to the rental unit. The Tenant did not include a claim in the Application for an order that the Landlord return his personal possessions. AM acknowledged all of the furnishings in the rental unit are owned by the Tenant.

Settlement Agreement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The parties agreed to the following final and binding settlement of all issues currently under dispute:

1. The Tenant agrees to withdraw the Application;
2. The Landlord agrees to cancel the 1 Month Notice;

3. The Tenant agrees he, and any other occupant have given up possession of the rental unit; and
4. The Landlord agrees to permit the Tenant access to the rental unit at mutually agreeable times, for a period of seven days from August 9, 2022, so that the Tenant may remove his personal possessions from the rental unit;

These particulars comprise the full and final settlement of all aspects of the Tenant's dispute against the Landlord. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding, which settle all aspects of claims made in the Application.

To give effect to the settlement reached by the parties, pursuant to section 65(1)(e) I order that any personal property seized or received by the Landlord must be returned to the Tenant pursuant to the terms of the settlement.

Pursuant to section 68(2), I order the tenancy ended on July 12, 2022. As the parties have agreed the Tenant will have access to the rental unit to remove his personal possessions, and in order to give effect to the settlement reached by the parties, I grant the Landlord an Order of Possession effective immediately upon service of the Order of on the Tenant by the Landlord.

Conclusion

As the parties have reached a full and final settlement of all the claims set out in the Application, I make no factual findings about the merits of the Application.

To give effect to the settlement between the parties, and as discuss at the hearing, I order:

(1) That the 1 Month Notice to be cancelled and of no force or effect;

(2) that any personal property seized or received by the Landlord must be returned to the Tenant pursuant to the terms of the settlement between the parties; and

(3) the Landlord is granted an Order of Possession effective immediately upon service of the Order upon the Tenant by the Landlord. Should the Tenant fail to comply with the Order of Possession, the Order may be filed in 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 9, 2022

Residential Tenancy Branch