



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: **OPC**
Tenant: **CNC-MT**

Introduction

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

1. An Order of Possession for a One Month Notice to End Tenancy For Cause (the "One Month Notice") pursuant to Sections 47, 55 and 62 of the Act.

This hearing dealt with the Tenant's application pursuant to the Act for:

1. Cancellation of the Landlord's One Month Notice pursuant to Section 47 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, Building Manager, and Assistant Building Manager, and the Tenant, and Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

The Landlord served the Tenant with the One Month Notice on April 20, 2022 by posting the notice on the Tenant's door. The Landlord provided a witnessed Proof of Service

document, and the Tenant confirmed receipt of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on April 23, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package on May 26, 2022 by Canada Post registered mail (the “NoDRP-L package”). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the NoDRP-L package. I find that the Tenant was deemed served with the NoDRP-L package five days after mailing them on May 31, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant stated he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing by email, he thought, on June 10, 2022 (the “NoDRP-T package”). The Landlord confirmed they have not received any legal documents from the Tenant by email. Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations (e.g.: by email if permitted).

The Tenant also requested more time to apply for dispute resolution. I find the Tenant did not serve the Landlord with the NoDRP-T package. Whether granted more time to apply for dispute resolution or not is moot in this case, as I find principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard

by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Tenant's application against the Landlord. I dismiss the Tenant's application for dispute resolution without leave to re-apply.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the One Month Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on October 1, 2002. The fixed term ended on September 30, 2003, then the tenancy continued on a month-to-month basis. Monthly rent is \$895.00 payable on the first day of each month. A security deposit of \$300.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was May 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

Tenant has been served with three warning concerning the foul odors coming from the unit and no corrective actions has been taken.

The Landlord presented a mutual agreement to end tenancy to the Tenant on June 10, 2022. The mutual agreement end date was August 31, 2022. The Tenant's signature was witnessed by the Building Manager, and later the Assistant Building Manager signed the mutual agreement to end tenancy with the knowledge that the Tenant had signed although the agreement says to please sign below in the presence of the Building Manager and Assistant Building Manager.

The Landlord testified that they agreed to end the tenancy giving the Tenant three months of free rent. The Tenant did not vacate the rental unit on August 31, 2022. The Landlord agreed in the hearing to give the Tenant September's rent as well and to extend the end date of the mutual agreement to September 30, 2022.

The Tenant seeks more time to dispute the One Month Notice. The Tenant's Advocate said that he used a library computer to apply for dispute resolution. She said he sent his application, but due to timing, it was not received on the next day and then the RTB did not accept his application.

The Tenant stated this rental unit has been his home for 20 years and he does not want to move. The Tenant said he does not want to be harassed all the time from the Landlord, but he did sign the mutual agreement to end tenancy. He said he wants better compensation than three free months of rent.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Landlord's notice: cause

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

...

(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.*

The Landlord's One Month Notice was deemed served on April 23, 2022. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant had until May 3, 2022 to apply for dispute resolution.

The Tenant applied for dispute resolution on May 27, 2022. RTB Policy Guideline # 36- Extending a Time Period specifies how an arbitrator may extend or modify a time limit established by the Act only in exception circumstances. It states:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do

something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well*
- the party did not know the applicable law or procedure*
- the party was not paying attention to the correct procedure*
- the party changed his or her mind about filing an application for arbitration*
- the party relied on incorrect information from a friend or relative*

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times*

The Tenant's advocate said the Tenant applied for dispute resolution at a public library on the last day to apply. The application was processed the next day and that next day was after the allowable submission date. I find that the Tenant has not provided reasons that qualify as exceptional circumstances which persuade me to find that his time limit to apply for dispute resolution may be extended. I find the Tenant did not apply in time for dispute resolution and I dismiss his application without leave to re-apply. I note that I previously dismissed the Tenant's dispute resolution application for improper service to the Landlord.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

55 ...

- (2) *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;

...

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],

(a) grant an order of possession, and

...

I have upheld the Landlord's One Month Notice and I find that the time to apply for dispute resolution has expired. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(4)(b) of the Act which will be effective on September 30, 2022 at 1:00 p.m.

Conclusion

I grant the Landlord an Order of Possession effective on September 30, 2022 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 20, 2022

Residential Tenancy Branch