



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LAT, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- Authorization to change the locks to the rental unit pursuant to section 31; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the amendment filed by the tenant. The tenant acknowledged service of the landlord's evidence. Neither party raised any concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue – severing issue

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's one month notice to end tenancy for cause was unrelated to the tenant's other issue of changing locks and advised the parties I would exercise my discretion to dismiss it with leave to

reapply. The tenant acknowledged she had not provided any evidence to support this portion of her claim and agreed it could be heard at a later date.

Preliminary Issue – notice to end tenancy issued April 27, 2022 not signed

At the commencement of the tenancy, the landlord acknowledged the notice to end tenancy dated April 27, 2022 was not signed.

Section 52(a) of the Act states that in order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice. I determined that as this notice to end tenancy was not signed by the landlord, it does not comply with section 52 and therefore has no force or effect. This notice to end tenancy was deemed ineffective at the commencement of the hearing.

Issue(s) to be Decided

Should the notice to end tenancy for cause be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. He served the tenant with a second notice to end tenancy for cause on July 24 by registered mail. The tracking number for the mailing is recorded on the cover page of this decision. With permission from both parties, I checked Canada Post's website during the hearing and determined that the status of the mailing shows as "available for pickup" as of July 27th.

The tenant testified that she was never given a notice card from Canada Post indicating there is an item awaiting delivery. The tenant testified the first she first found out about the second notice to end tenancy was by email sent by the landlord on August 16th. All communication between the parties was done by email, according to the tenant. As

soon as she found out about the second notice to end tenancy, she called the Residential Tenancy Branch who advised her to file an amendment to her existing dispute resolution file seeking to dispute it. She filed the amendment on August 24th.

A copy of the notice to end tenancy was provided as evidence. It is signed and dated by the landlord and provides an effective (move-out) date of August 31, 2022. The reason for ending the tenancy states:

The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant o the landlord.

Under “details of cause” the landlord writes:

Details of the Event(s):

1. From listing date (2022.04.07) till today (2022.07.22), there are at least 12 showing requests (in email record), and only one showing proceeded.
2. From listing date (2022.04.07) till today (2022.07.22), only 3 time slots allowed showing on weekends, one of them was in short notice.
3. The reasons for failed showings are sickness, change of requested schedules ignoring realtor communication, and not allowing Open Houses at Sat/Sun normal hours (2-4pm).

Attached file is the listed record of tenant unreasonably refusing access to show the unit. Each refusal has both tenant & realtor's emails as supporting record.

The landlord testified that he is trying to sell the rental unit. The landlord alleges that the tenant has been uncooperative in allowing the realtor to show the unit to prospective purchasers or has made it difficult for prospective purchasers to view the unit. The landlord states the tenant has turned down requests to have open houses on weekends. He has received late responses from the tenant when asking to show the unit, forcing him to cancel showing requests. The tenant is not willing to cooperate with the landlord's selling agent.

During the hearing, the landlord referred to a chronological record of requests to show the unit, the tenant's response and the results of the refusals provided in his evidence package. The landlord alleges several incidents of the tenant refusing to provide access to open houses due to sickness during the first few weeks of listing the property on April 7th, followed by unreasonable times and dates for showings where the listing agent had very few showings or had to cancel showings due to unusual times. The landlord testified that his realtor lost opportunities for open houses on weekends due to a lack of cooperation from the tenant.

The tenant gave the following testimony. She did not receive the notice to end tenancy sent to her via registered mail in late July. She never got the notification card from Canada Post indicating there was an item waiting for her to pick up.

Regarding the reason for ending the tenancy, the tenant testified that she has been sick with Covid, causing the pre-arranged first weekend showing of the unit to be cancelled. She has been on medical leave from work since April, May and June of this year. She finally went back to work in July and has been under stress since, due to the nature of her work.

The tenant argues that she has been cooperative in helping the landlord sell his unit. She has consistently offered dates that would work for her if and when the dates proposed by the landlord's agent were inconvenient to her. Emails between the tenant, the landlord's selling agent and the landlord were provided as evidence to corroborate the tenant's testimony.

Analysis

The landlord testified that he sent the notice to end tenancy for cause to the tenant via registered mail on July 24th and provided the tracking number to corroborate this testimony. During the hearing, with the permission of both parties, I looked up the tracking number and confirmed that the package was accepted at the post office on July 24th and that on July 27th a notice card was left for the tenant, indicating where and when to pick up the item. A second "final notice" was left for the tenant on August 2nd indicating the item will be returned to sender if not collected within 10 days.

Section 88(c) of the Residential Tenancy Act states:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(c) by sending a copy by ordinary mail or 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.

Section 90(a) of the Act states:

A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:

(a) if given or served by mail, on the fifth day after it is mailed;

Residential Tenancy Branch Policy Guideline PG-12 [Service Provisions] provides clarification regarding issues with respect to service of documents. It states at part 11:

Deemed Receipt:

The Legislation sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received:

- if given or served by mail (ordinary or Registered Mail/Express Post with signature option), on the fifth day after mailing it;
- if given or served by fax, on the third day after faxing it;
- if given or served by email, on the third day after emailing it;
- if given or served by attaching a copy of the document to a door or other
- conspicuous place, on the third day after attaching it; and
- if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after leaving it.

Deemed receipt applies to all types of documents not personally served. Deemed receipt provisions are generally used in the absence of evidence of the date documents were actually received, such as when a respondent has not filed a dispute or appeared at a dispute resolution hearing. The provisions are also used to calculate timelines for future events, such as when notice of hearing packages must be served in order to ensure the respondent has the required amount of notice of the hearing.

...

The deemed receipt provisions do not give parties additional time to file a response.

Based on the landlord's testimony that he sent the tenant the notice to end tenancy via registered mail on July 24th, corroborated by Canada Post's delivery confirmation information indicating cards were left on two separate occasions, I deem the tenant effectively served with the notice to end tenancy on July 29th, five days after being sent via registered mail pursuant to sections 88 and 90 of the Act.

Section 47(4) of the Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the tenant receives the notice. The tenant filed the amendment to the original application for dispute resolution

seeking to dispute this second notice to end tenancy on August 24, 2022, twenty-six days after being deemed served with it on July 29th. As such, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit in accordance with section 47(5) of the Act. Consequently, I dismiss the tenant's application to cancel the notice to end tenancy and I uphold the landlord's notice.

I have reviewed this second notice to end tenancy and find it complies with the form and content provisions as set out in section 52. The effective date stated in the landlord's notice has passed and I grant the landlord an Order of Possession effective 2 days after service upon the tenant pursuant to section 55(1) of the Act.

As the tenant's application was not successful, the filing fee will not be recovered.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 *Residential Tenancy Act*.

Dated: September 08, 2022

Residential Tenancy Branch