Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI-ARI-C, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order to dispute a rental increase, pursuant to section 43;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant NV (the tenant) and landlord KT (the landlord) attended the hearing. The tenant was assisted by interpreter JP. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Service

The landlord confirmed receipt of the notice of hearing and the copy of the tenancy agreement (the materials) on June 25, 2022.

Based on the landlord’s testimony, I find the tenant serviced the materials in accordance with section 89(1) of the Act.

The tenant affirmed she served a copy of the 2 month notice to end tenancy for landlord's use dated May 30, 2022 (the Notice). The effective date is July 31, 2022.

The landlord stated she did not receive a copy of the Notice as part of the tenant's materials.

Rule of Procedure 3.14 states:

> 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.

Based on the landlord's more convincing testimony, I find the tenant did not serve a copy of the Notice to the landlord as evidence for this application. I excluded the copy of the Notice from consideration.

Preliminary Issue – application to cancel the Notice

The tenant's application states:

> 01 - I want to dispute an Additional Rent Increase for Capital Expenditures
> Applicant's dispute description:
> My landlord [redacted for privacy] wanted to increase my rent by asking me to pay for utility (electricity), however as part of the Rental Agreement that is suppose to be utility included. **So I refused to pay the utility, she then asked me to leave by July 30th**. Also, she told me that she need to have a key to my room and access my rental unit even without my consent. Please help me I'm turning 65 and it's difficult for me to find a place and maneuver around. Thank you.
>
> 02 - I want the landlord to comply with the Act, regulation and/or the tenancy agreement:
> Applicant's dispute description
> **I wish to stay with rental unit and Landlord to follow the Rental Agreement.** If increase rental have to comply to the Provincial Law.
>
> (emphasis added)

The tenant testified that she submitted this application to obtain an order to cancel the Notice. The landlord confirmed twice that she clearly understands that the tenant is seeking to cancel the Notice.

Based on the testimony offered by both parties and the application, I find that both parties were aware that the tenant is seeking to cancel the Notice. The application indicates the landlord asked the tenant to leave by July 30, 2022, one day before the Notice's effective date.

Per section 59(2)(b) of the Act, I accept the tenant's application for an order to cancel the Notice, pursuant to section 49 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the ongoing tenancy started in December 2018. Monthly rent is $1,200.00, due on the first day of the month. At the outset of the tenancy a security deposit of $600.00 and a pet damage deposit of $300.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence.

The landlord served the Notice on May 31, 2022. The landlord said that her niece will occupy the rental unit.

The tenant submitted this application on June 13, 2022 and continues to occupy the rental unit.

Analysis

Based on the landlord's undisputed testimony, I find the tenant was served the Notice on May 31, 2022, in accordance with section 88 of the Act. As the tenant submitted this application on June 13, 2022, I find the tenant disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Section 49(1) of the Act states:

> "close family member" means, in relation to an individual:
> (a)the individual's parent, spouse or child, or
> (b)the parent or child of that individual's spouse;

Section 49(3) of the Act states: "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The landlord served the Notice for her niece to occupy the rental unit. I find that niece does not meet the definition of a close family member set out in section 49(1) of the Act.

Accordingly, the Notice is cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the Act.

I considered adjourning this hearing to allow the parties to provide further evidence for the application to cancel the Notice. However, as the landlord confirmed that she served the Notice for her niece to occupy the rental unit, I found, based on the reasons above stated, that it is not necessary to have further evidence to render a decision about the Notice.

Pursuant to section 72 of the Act, as the tenant was successful in this application, the tenant is entitled to recover the filing fee.

Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct $100.00 from a future rent payment to recover the filing fee.

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: October 28, 2022

Residential Tenancy Branch