



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNR, CNR

Introduction

This hearing was convened as a result of three applications for dispute resolution made by the Tenant on October 15, October 24, and November 7, 2022. In each of the applications, the Tenant requested an order cancelling three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, all dated October 17, 2022, pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing on her own behalf. The Landlord, who is the building manager, also attended the hearing. Both the Tenant and the Landlord provided a solemn affirmation at the beginning of the hearing.

Preliminary Issue – Are the issues in the Tenant’s applications linked substantially to a matter that is currently before the Supreme Court?

At the beginning of the hearing and throughout, the Tenant asserted that the issues before me are substantially linked to a matter that is currently before the Supreme Court. Accordingly, the Tenant maintained that I do not have jurisdiction to consider the issues raised in the Tenant’s applications. Specifically, the Tenant testified that she applied for Judicial Review of a decision dated September 16, 2022. In that decision, the main issue before the arbitrator was related to a One Month Notice to End Tenancy for Cause. After hearing the parties’ evidence and submissions, the Tenant’s conduct was relied upon as a basis to end the tenancy. At page 9 of his decision, the arbitrator found that communications from the Tenant to the Landlord were “unreasonable both in quantity and subject matter.” The arbitrator concluded that this was a sufficient basis upon which to uphold the One Month Notice to End Tenancy and grant an order of possession to the Landlord.

The Tenant also testified that the amount of rent due is also an issue before the Supreme Court.

The Tenant was asked if any documentary evidence of an application for Judicial Review was submitted to the Residential Tenancy Branch Dispute Management System. The Tenant stated she is not required to provide such evidence and advised that the Residential Tenancy Branch has been provided with notice of the application for Judicial Review. The Tenant did not refer me to any documentary evidence related to an application for Judicial Review.

The Landlord did not deny there is a matter currently before the Supreme Court. He also testified that rent has not been paid in full but was unable to provide a precise total of the rent currently outstanding.

Section 58(2)(d) of the Act confirms that “the director must not determine a dispute if...the dispute is linked substantially to a matter that is before the Supreme Court.” While I accept that there is a matter before the Supreme Court, I find it is more likely than not that the matter is related to the decision dated September 16, 2022. That is, I find it is more likely than not that the application for Judicial Review is related to the order of possession granted on the basis of the Tenant’s conduct. Although the Tenant may wish to make the payment of rent an issue to put before the Supreme Court, a party seeking Judicial Review of a decision or order is not at liberty to add issues beyond the scope of the decision under review.

Considering the above, I find there is insufficient evidence before me to conclude that the issue before me – the payment of rent when due – is linked substantially to a matter that is before the Supreme Court. Accordingly, I find I have jurisdiction to decide on the matters before me.

Preliminary Issue – Were the Notices of Dispute Resolution Proceeding documents served in accordance with the Act?

As I found I have jurisdiction to decide on the matters before me, the Tenant was asked to provide evidence regarding service of the Notice of Dispute Resolution Proceeding packages on the Landlord. The Tenant testified that the first application (made on October 15, 2022) was not served on the Landlord but the second and third (made on October 24 and November 7, 2022, respectively) were served on the Landlord by email. The Tenant did not refer me to any documentary evidence in support of service by

email, or that the Landlord provided the Tenant with an email address for service of documents in accordance with section 43 of the Residential Tenancy Regulation.

The Landlord testified that he has not received any documentation from the Tenant relating to the applications. He stated that he first heard of the hearing three days before the hearing when he received an email notification from the Residential Tenancy Branch.

Considering the above, I find there is insufficient evidence before me to conclude the Tenant served the Landlord with the Notice of Dispute Resolution Proceeding documents related to the applications referred to above in accordance with the Act. As a result, I find that the Tenant's applications are dismissed without leave to reapply.

Preliminary Issue – The Tenant's behaviour during the hearing

The Tenant shouted and interrupted throughout the hearing despite repeated requests to cease doing so. At the end of the hearing, the Tenant disconnected from the telephone conference and did not return. The Tenant disconnected at 10:16 a.m.; the hearing ended at 10:19 a.m.

I am satisfied that, despite the Tenant's behaviour, both parties were given a sufficient opportunity to be heard. Any evidence or submissions made by the Landlord in the Tenant's absence at the end of the hearing were not considered in coming to the findings I have made in this decision.

Analysis

Based on the affirmed testimony and submissions of the parties, and on a balance of probabilities, I find:

Section 55(1) of the Act confirms that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant the landlord an order of possession of the rental unit. The language in the Act is mandatory.

In this case, I have reviewed the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities and find they comply with the form and content requirements of section 52 of the Act. They are signed and dated, give the address of the rental unit, state the

effective dates, state the grounds for ending the tenancy, and are in the approved form. I have also found that the Tenant's applications to cancel the 10 Day Notices are dismissed for failure to serve the Notices of Dispute Resolution Proceeding documents on the Landlord in accordance with the Act. As a result, pursuant to section 55(1) of the Act, I find the Landlord is entitled to an order of possession. The order will be effective two days after it is served on the Tenant.

In addition, section 55(1.1) confirms that when a tenant's application to cancel a notice to end tenancy for unpaid rent or utilities is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order requiring the payment of the unpaid rent. The language in the Act is mandatory.

In this case, I find there is insufficient evidence before me to confirm the total amount of rent outstanding. Although the Tenant acknowledged rent has not been paid in full due to concerns about the condition of the rental unit, the Landlord was unable to provide clear evidence about the amount of rent due as of the date of the hearing. As a result, I decline to grant the Landlord a monetary award for unpaid rent. The Landlord remains at liberty to apply for a monetary order for unpaid rent.

Conclusion

I find that the Tenant's Applications for Dispute Resolution referred to above are dismissed without leave to reapply.

By operation of section 55(1) of the Act, I find the Landlord is entitled to an order of possession which will be effective two days after service on the Tenant. The order of possession may be filed in 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 Residential Tenancy Act.

Dated: January 31, 2023

Residential Tenancy Branch