Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKDALE ENTERPRISES WARRINGTON
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, 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:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an authorization to recover the filing fee for this application, under section 72.

The respondent landlord AW (the landlord) called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 1:41 P.M. to enable the applicant tenant to connect with this teleconference hearing scheduled for 1:30 P.M., the applicant did not attend. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only persons who had called into this teleconference.

At the outset of the hearing the attending 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. The attending 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.”

The landlord confirmed receipt of the notice of hearing and that he had enough time to review it.

The landlord affirmed he served the response evidence in person on January 10, 2023.

Based on the landlord's undisputed testimony, I find the tenant served the notice of hearing and the landlord served the response evidence in accordance with section 89 of the Act.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

> **Rule 7 – During the hearing**
> **7.1 Commencement of the dispute resolution hearing**
> The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.
> **7.3 Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

However, according to M.B.B. v. Affordable Housing Charitable Association, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

> [27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

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

1. Is the tenant entitled to cancellation of the Notice?

2. Is the tenant entitled to 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 evidence of the attending party, 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 party; it is the landlord's obligation to present the evidence to substantiate the Notice.

The landlord affirmed the ongoing tenancy started in March 2022. Monthly rent as of January 01, 2023 is $518.00. The landlord collected and currently holds in trust the security deposit in the amount of $254.00.

The landlord stated that he served the Notice dated October 07, 2022 on November 7, 2022.

The landlord is seeking an order of possession.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

> 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Per Rule of Procedure 6.6, the landlord has the onus to substantiate the Notice.

Section 52 of the Act states:

> In order to be effective, a notice to end a tenancy must be in writing and must
> (a)be signed and dated by the landlord or tenant giving the notice,
> (b)give the address of the rental unit,
> (c)state the effective date of the notice,
> (d)except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
(e)when given by a landlord, be in the approved form.

As a copy of the Notice was not accepted into evidence, I can not confirm if the Notice is in accordance with section 52 of the Act. Thus, I find the landlord failed to substantiate the Notice. Accordingly, I cancel the Notice.

I note that I am not making any findings about the merits of the Notice.

As the tenant was successful in this application, pursuant to section 72 of the Act, I authorize the tenant to recover the $100.00 filing fee. I order that this amount may be deducted from a future rent payment

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: January 23, 2023

Residential Tenancy Branch