



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the tenant: CNC, MNDCT, RPP, OLC, FFT
For the landlord: OPR-DR, MNR-DR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for:

- cancellation of the One Month Notice to End Tenancy for Cause (the one month Notice), pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- an order for the landlord to return the tenant's personal property, pursuant to section 65;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the ten day Notice) pursuant to sections 46 and 55; and
- a monetary order for unpaid rent, pursuant to section 26.

I note that section 55(1) 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.

Both parties attended the hearing. 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 tenant's notice of hearing.

Based on the undisputed testimony, I find the tenant served the notice of hearing for the tenant's application in accordance with section 89(1) of the Act.

The landlord served the notice of hearing and the evidence via registered mail to the tenant. The landlord does not remember when he mailed the package. The landlord's evidence contains a copy of the 10 day Notice, a direct request worksheet, three photographs and one email dated March 4, 2023.

The tenant confirmed receipt of the landlord's notice of hearing, the 10 day Notice and the direct request worksheet. The tenant affirmed that she had enough time to review these documents.

Based on the tenant's testimony, I find the landlord served the notice of hearing for the landlord's application, a copy of the 10 day Notice and the direct request worksheet, in accordance with section 89(2) of the Act.

Based on the landlord's vague testimony, I find the landlord failed to prove service of the photographs and the email dated March 4, 2023. I have excluded these documents, per Rules of Procedure 3.5 and 3.14.

Preliminary Issue – Partial withdrawal and correction of the landlord's name

At the outset of the hearing the landlord stated he is no longer seeking a monetary order for unpaid rent and corrected the spelling of his first name.

Pursuant to section 64(3)(c) of the Act, I have amended the applications.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the ten day Notice, the one month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notices. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except for the cancellation of the notices to end tenancy which will be decided upon.

Issues to be Decided

Is the landlord entitled to an order of possession under the ten day Notice?

Is the tenant entitled to the cancellation of the one month Notice?

If the tenant's application for cancellation of the one month Notice is dismissed, is the landlord entitled to an order of possession under the one month Notice?

Is the tenant entitled to an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the 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 Notices.

Both parties agreed the tenancy started in August 2022. Monthly rent is \$750.00, due on the first day of the month. The landlord collected and currently holds in trust a security deposit of \$375.00.

The landlord mailed the one month notice via registered mail on October 16, 2022. The tracking number is recorded on the cover page of this decision. The tenant confirmed receipt of the one month notice a few days after the date it was mailed.

The landlord submitted the one month Notice into evidence. It is dated October 15, 2022 and the effective date is November 30, 2022. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - Put the landlord's property at significant risk.

The details of the cause are:

On October 14th, 2022 RCMP was called as a Fire Arm was found in the property maintenance closet that was unlocked and left open. The closet is managed by [the tenant]. The same maintenance closet was unlocked and left open the previous day as well and [the landlord] called [the tenant] to make sure that the closet was locked and secure and she confirmed it was. RCMP called [the landlord] On October 14th, 2022 at 2:42pm to notify of a Fire Arm found on premises that was left unattended and not secured, RCMP has confiscated the Fire Arm.

Safety of the other tenants, property, neighbors were all at risk.

[the tenant] has been terminated from managing the property on October 14th, 2022 at 3:21pm due to this incident and other previous Bylaw/Fire inspection issue, that was not complied regarding the safety of the building and the tenants.

The tenant submitted the application on October 28, 2022 and continues to occupy the rental unit.

The landlord mailed the ten day Notice via registered mail on November 2, 2022. The tracking number is recorded on the cover page of this decision. The tenant testified she

does not remember when she received the ten day Notice. At a later point the tenant said she received the ten day Notice on November 18, 2022.

Canada Post's website indicates the package mailed on November 2, 2022 was available for pick up on November 7, 2022 and the tenant received it on November 18, 2022.

The tenant affirmed that she was away on vacation for a few days in November 2022 and the tenant did not ask anybody to check her mailbox during her vacation. The tenant stated that if she knew the landlord had issued the ten day Notice she would have paid November's rent earlier.

The landlord believes he called the tenant to inform her that she did not pay November's rent and that the tenant did not answer the phone.

The landlord submitted the ten day Notice into evidence. It is dated November 2, 2022 and the effective date is November 17, 2022. The ten day Notice indicates the tenant failed to pay rent in the amount of \$750.00 due on November 1, 2022.

Both parties agreed the tenant paid \$375.00 on November 5 and \$375.00 on November 22, 2022.

The tenant did not dispute the ten day Notice because she paid rent within five days from the date she received the ten day Notice.

Both parties agreed the tenant paid rent in full in December 2022, January, February and March 2023.

The landlord testified the tenant stored a firearm in a utility closet and the police confiscated the firearm on October 14, 2022. The tenant said that she stored a pellet gun in the utility closet.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Section 88(c) of the Act states the landlord may serve documents by ordinary or registered mail to the tenant's address.

Based on the landlord's convincing testimony and the tracking number, I find the landlord mailed the ten day Notice on November 2, 2022, in accordance with section 88(c) of the Act.

Section 90(a) of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. [page 13]

[...]

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served. [page 14]

I accept the tenant's testimony that she was on vacation in November 2022 and only received the registered mail on November 18, 2022. However, I find that the fact the tenant was on vacation is not a reason to override the deeming provision of section 90(a) of the Act. The tenant did not inform the landlord that she would be on vacation and that she would not be able to receive her mail in November 2022. Furthermore, the tenant's testimony about the dates that she was on vacation was vague.

I also find it would be very onerous for landlords if tenants could override the deeming provisions by going on vacation, not paying rent on time, and not informing the landlords that they will not be able to receive mail when they are on vacation.

Considering the above, the tenant is deemed to have received the ten day Notice on November 7, 2022, in accordance with section 90(a) of the Act.

I accept the uncontested testimony that the tenant paid the balance of rent on November 22, 2022.

Section 46(1) of the Act states:

Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.

Considering that I deemed the tenant received the ten day Notice on November 7, 2022, I find the tenant had to pay rent in full until November 12, 2022.

I find the form and content of the Notice complies with section 52 of the Act, as the ten day Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and it is in the approved form.

I find the tenancy ended on November 17, 2022, per section 44(1)(a)(ii) of the Act.

Considering the above, the landlord is entitled to an order of possession, per section 55(2)(b) of the Act.

As I awarded the landlord an order of possession based on the ten day Notice and the effective date of the one month Notice is November 30, 2022, the tenant's application to cancel the one month Notice is moot.

RTB Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession:

However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.
While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

As the tenant has been occupying the rental unit since August 2022 and has already paid rent due on March 01, 2023, I find it reasonable to extend the effective date of the order of possession to ten calendar days after service on the tenant.

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective **ten calendar days after service of this order** on the tenant. 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 *Residential Tenancy Act*.

Dated: March 14, 2023

Residential Tenancy Branch