



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNL-4M-MT

Introduction

A hearing was convened on February 10, 2023 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, to cancel a Four Month Notice to End Tenancy, and for more time to apply to cancel the Four Month Notice to End Tenancy.

A Four Month Notice to End Tenancy allows a tenant 30 days to dispute the Notice. As the parties agree that this Notice was received on September 09, 2022 and Residential Tenancy Branch records show it was disputed on September 28, 2022, I find it was disputed on time and I do not need to consider the application for more time to apply to cancel the Four Month Notice to End Tenancy.

The Tenant stated that on October 19, 2022 the Dispute Resolution Package was personally served to the Landlord's wife. The Landlord's wife, who was represent at the hearing, acknowledged receipt of the Application for Dispute. The Landlord acknowledged receiving these documents from his wife. I therefore find that these documents were sufficiently served to the Landlord, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

The Tenant stated that on October 19, 2022 evidence submitted to the Residential Tenancy Branch on September 28, 2022 was personally served to the Landlord's wife. The Landlord's wife stated that she does not recall if the evidence was served to her.

I note that many of the documents submitted in evidence by the Tenant were also submitted in evidence by the Landlord, including the One Month Notice to End Tenancy

for Cause, the letter attached to the One Month Notice to End Tenancy for Cause, a letter from the municipality, photographs taken by the Landlord on August 11, 2022, and a document written by the Landlord titled "Details of Events". As these documents have been submitted to the Residential Tenancy Branch by both parties, I find it reasonable that they be accepted as evidence for these proceedings even if the Landlord's wife does not recall them being served to her.

The Tenant submitted photographs to the Residential Tenancy Branch on September 28, 2022 which were taken by the Tenant on September 22, 2022. As the Landlord acknowledged being in possession of these photographs when they were discussed at the hearing, I find it reasonable to conclude that they were served to the Landlord's wife on October 19, 2022 and I accept them as evidence for these proceedings.

The Tenant submitted a copy of the Four Month Notice to End Tenancy to the Residential Tenancy Branch on September 28, 2022. As the Landlord acknowledged being in possession of this document when it was discussed at the hearing, I find it reasonable to conclude that it should be considered as evidence for these proceedings.

The Tenant submitted a copy of a demolition permit to the Residential Tenancy Branch on September 28, 2022. As this permit was issued to the Landlord and the Landlord acknowledged being in possession of this document when it was discussed at the hearing, I find it reasonable to conclude that it should be considered as evidence for these proceedings.

On November 22, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was posted on the Tenant's gate on November 26, 2022. The Tenant stated that he received this evidence on November 24, 2022. As the Tenant acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

On December 22, 2022, the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was posted on the Tenant's gate, although he does not recall when it was posted. The Tenant stated that he only received the one package of evidence he located on November 24, 2022.

The documents submitted by the Landlord on December 22, 2022 were reviewed with the Tenant and he acknowledged that he is in possession of all of those documents, with the exception of a document dated October 07, 2022. As the Tenant is in all of

those documents, with the exception of the document dated October 07, 2022, I find it reasonable to conclude that they should be considered as evidence for these proceedings.

As the Tenant does not acknowledge receiving the document dated October 07, 2022 and there is insufficient evidence to establish that it was served to the Tenant, it was not accepted as evidence for these proceedings. I find that this does not unduly prejudice the Landlord, as the document just outlines written submissions the Landlord had the opportunity to present at the hearing.

There was insufficient time to conclude the hearing on February 10, 2023, so the hearing was adjourned. The hearing was reconvened on April 24, 2023, and was concluded on that date.

On February 16, 2023, the Tenant submitted additional evidence to the Residential Tenancy Branch. At the hearing on April 24, 2023, the Tenant stated that this evidence was posted on the Landlord's door on February 16, 2023. The Landlord denied receiving this evidence. The Tenant submitted no evidence to corroborate is testimony that this evidence was posted on the Landlord's door. As the Tenant has submitted insufficient evidence to establish that this evidence was served to the Landlord, it was not accepted as evidence for these proceedings.

On February 15, 2023, the Landlord submitted additional evidence to the Residential Tenancy Branch. At the hearing on April 24, 2023, the Landlord stated that this evidence was posted on the Tenant's gate on February 15, 2023. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On February 22, 2023, the Landlord submitted additional evidence to the Residential Tenancy Branch. At the hearing on April 24, 2023, the Landlord stated that this evidence was posted on the Tenant's gate on February 22, 2023. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause and/or the Four Month Notice to End Tenancy be set aside?

Background and Evidence Provided on February 10, 2023

The Landlord and the Tenant agree that:

- this tenancy began in 2012;
- rent is due by the first day of each month;
- a Four Month Notice to End Tenancy was served to the Tenant on September 09, 2022;
- the Four Month Notice to End Tenancy declares that the rental unit must be vacated by January 31, 2022 because the unit is being demolished;
- the Landlord has a permit to demolish the unit, which was issued on September 02, 2022;
- on September 21, 2022, a One Month Notice to End Tenancy for Cause was posted on the gate leading to the rental unit;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by October 30, 2022;
- the Landlord has not identified any of the reasons for ending the tenancy on the appropriate location on the second page of the One Month Notice to End Tenancy for Cause;
- the Tenant is still living in the rental unit; and
- the tidiness of the rental unit/site has been an on-going issue during this tenancy;
- the tidiness of the unit/site was the subject of a dispute resolution proceeding in 2018, 2019, and 2020.

In a letter provided with the One Month Notice to End Tenancy for Cause, the Landlord explained that the One Month Notice to End Tenancy for Cause was served because the yard has not been kept in a tidy manner. The letter is dated September 21, 2022.

The Landlord stated that the One Month Notice to End Tenancy for Cause was posted on the Tenant's gate on September 21, 2022. The Tenant stated that it was located on his gate on September 21, 2022.

The Landlord stated that the Four Month Notice to End Tenancy was posted on the Tenant's gate on September 09, 2022. The Tenant stated that he found it posted on his door on September 09, 2022.

The Landlord stated that he received a letter from the municipality, dated November 24, 2021, which declared that the Landlord's property had been inspected on November 23, 2021 and it was determined that the condition of the property contravened the unsightly premises bylaw.

The Tenant stated that he is not the only person living on the property. He stated that the letter of November 24, 2021 refers to the unsightly premises of another individual who was living elsewhere on the property under a separate tenancy agreement. He stated that this individual died, and the Landlord hired him to clean the deceased tenant's belongings.

The Landlord agrees that he hired the Tenant to clean up property belonging to the deceased tenant. The Landlord stated that the letter from the municipality is referring to the Tenant's site.

The Landlord and the Tenant agree that a copy of this letter was provided to the Tenant. The Landlord stated that it was provided in late November of 2021 and the Tenant stated that it was provided in January of 2022.

The Landlord stated in 2022 the Tenant was asked to clean up his personal belongings on August 14, 2022, and September 08, 2022.

The Tenant agrees that the Landlord told him to clean up his personal belongings on September 08, 2022. He stated that the Landlord did not ask him to clean up his personal belongings in August of 2022.

The Landlord stated that he submitted a copy of a letter, dated August 14, 2022, to the Residential Tenancy Branch in which he informed the Tenant that he needed to clean his site. The Tenant stated that he does not have a copy of this letter in the evidence served to him. The parties were advised that I do not have a copy of that letter before me.

The Landlord submitted photographs of the rental site which the Landlord stated were taken on August 11, 2022. The Tenant agrees that the photographs are a fair representation of the site on that date.

The Tenant stated that he cleaned his site approximately two days after the photographs were taken on August 11, 2022. He stated that he was not asked to clean it, but he did not because he was going away, and he did not wish to return to a messy site.

The Tenant submitted photographs of the rental site which the Tenant stated were taken on September 22, 2022. The Landlord agrees that those are a fair representation of the site on that date.

The Landlord stated that as of today the site looks the same as it did in August of 2022 and the same as it did in September of 2022. He stated that the condition of the property has not changed since his photos were taken on August 11, 2022. He stated that on September 08, 2022 the site looked worse than it did on August 11, 2022. He stated that he did not submit any photographs of the site that were taken after August 11, 2022.

The Tenant stated that there is currently no garbage on his site, although some milk cartons may have been blown around. He stated he is storing firewood on the site. He stated that on September 08, 2022, his site looked much better than it did on August 11, 2022.

The Landlord stated that he plans to demolish the unit because it is collapsing. The Tenant stated that the unit is not collapsing.

The Landlord agreed that there have been many failed attempts to end this tenancy, including a recent attempt to end this tenancy for the purposes of converting the rental unit into a chicken coop.

The Landlord stated that he wishes to end this tenancy, in part, because the septic system has failed and it will be very expensive to fix it.

The Landlord stated that he wishes to end this tenancy, in part, because the municipality will not allow the Tenant to live on the site.

Background and Evidence Provided on April 24, 2023

The Landlord and the Tenant advised that they recently reached a settlement agreement. They each stated that they would like to settle all issues in dispute at these proceedings under the following terms:

- the Tenant will stop living in the rental unit by May 01, 2023;
- the Tenant will move all of his property from the rental unit by May 31, 2023;
- the Tenant will clean the yard around the rental unit;
- the Landlord agrees that the Tenant can move into another unit on the residential property and can live in that unit as a “roommate” with the current occupant of that unit; and
- the Tenant will be paying rent directly to the occupant of the other unit.

This agreement was summarized for the parties on at least two occasions. The Landlord and the Tenant clearly indicated that they agreed to resolve this dispute under these terms.

The Landlord and the Tenant each acknowledged that they understand they were not required to enter into this agreement and that they understood the agreement was final and binding.

Analysis

I find that all issues in dispute at these proceedings have been settled in accordance with the aforementioned settlement agreement.

As the parties have mutually agreed to settle all issues in dispute at these proceedings, I find it is not necessary for me to consider the merits of the Application for Dispute Resolution.

Conclusion

All issues in dispute at these proceedings have been settled in accordance with the terms above.

On the basis of the settlement agreement, I grant the Landlord an Order of Possession that is effective on **at 1:00 p.m. on May 31, 2023**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 24, 2023

Residential Tenancy Branch