



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the tenant: CNC, MNDCT, OLC, FFT

For the landlord: OPR, OPC, MNRL-S, MNDCL-S, FFL

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 (Regulation) or tenancy agreement, pursuant to section 67;
- an order for the landlord to comply with the Act, 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 10 Day Notice), pursuant to sections 46 and 55;
- an order of possession under the One Month Notice, under sections 47 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee, under section 72.

Both parties attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Service of the tenant's notice of hearing and evidence (the tenant's package)

The tenant's notice of hearing is dated March 14, 2023 and the landlord's notice of hearing is dated May 23, 2023.

The landlord confirmed receipt of the tenant's package and that she had enough time to review it.

I find the tenant served the tenant's package in accordance with section 89(1) of the Act.

Service of the landlord's notice of hearing and evidence (the landlord's package)

The landlord registered mailed the landlord's package to the rental unit's address on May 24, 2023. The tracking number is recorded on the cover page of this unit. The landlord submitted RTB form 55 (proof of service) and a copy of the Canada Post receipt with the tracking number.

Canada Post indicates the package was mailed on May 24, notices were left for the tenant to receive the package on May 26 and 31, and the package was returned to the landlord on June 13, 2023.

The tenant affirmed that he received the landlord's package. Later the tenant stated that maybe he did not receive it, as he received a notice from Canada Post regarding an undelivered package. The tenant testified that he did not pick up the Canada Post package because he imagined that it was not an important document.

Residential Tenancy Branch (RTB) Policy Guideline 12 states that the tenant's failure to claim a registered mail does not prevent me from deeming the tenant received the mail.

Where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing, in accordance with Policy Guideline 12 and section 90(a) of the Act.

Based on the testimony offered by both parties and the tracking number, I find the landlord served the landlord's package in accordance with section 89(2)(b) of the Act.

I deem the tenant received the landlord's package on May 29, 2023.

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 One Month, the 10 Day Notices and the continuation of this tenancy are not sufficiently related to any of the parties' other claims to warrant that they be heard together.

The parties' other claims are unrelated in that the basis for them rest 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 One Month and the 10 Day Notices. I exercise my discretion to dismiss all of the parties' other claims with leave to reapply except the cancellation of the One Month and the 10 Day Notices which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. the cancellation of the One Month Notice?
2. an authorization to recover the filing fee?

Is the landlord entitled to:

1. an order of possession under the One Month Notice?
2. an order of possession under the 10 Day Notice?
3. a monetary order for unpaid rent?
4. an authorization to recover the filing fee?

Background and Evidence

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

Both parties agreed that monthly rent today is \$5,500.00, due on the first day of the month. The parties submitted into evidence the tenancy agreement.

The tenant said the ongoing tenancy started in 2015. The landlord collected and holds a security deposit of \$2,750.00.

The landlord affirmed the ongoing tenancy started on March 1, 2018. The landlord collected and holds a security deposit of \$750.00.

The rental unit is a single family house containing a 5-bedroom upper suite and a 4-bedroom lower suite. Each suite has approximately 2,000 square feet.

Both parties agreed the landlord served and the tenant received the One Month Notice dated February 25, 2023 on the date it was issued. The effective date is March 31, 2023. The reasons to end the tenancy are:

- The tenant is repeatedly late paying rent.
- The tenant has allowed an unreasonable number of occupants in the unit/site.
- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The details of the events are:

Tenant is repeatedly late paying rent as follows :

March 2022, April 2022, May 2022, June 2022, July 2022, Aug 2022, Sept 2022, Oct 2022 Jan 2023 and Feb 2023.

2 City of [redacted] By Law Community Safety Department letters were sent to the landlord about property Feb 10 2023 and Jan 26 2022.

The tenant applied to dispute the One Month Notice on February 28, 2023.

Both parties agreed the tenant paid rent late several times during this tenancy. The landlord stated that she warned the tenant to pay rent on the due date. The tenant testified the landlord never warned him about paying rent on the due date. The tenant has been paying rent on the due date after the landlord served the One Month Notice.

The landlord said the tenant has put the rental unit at significant risk because he allowed an unreasonable number of occupants in the rental unit.

The January 26, 2022 letter issued by the city where the rental unit is located (hereinafter, the city) states:

An inspection of [rental unit] conducted on 2022 January 25 revealed two mobile/tiny homes at rear of property under construction.

Under the provisions of the [redacted] Zoning Bylaw, your property at [redacted] is zoned as a Residential District (R4). The Zoning Bylaw does not allow manufacturing at this property. The Zoning Bylaw permits one recreation vehicle or trailer not exceeding length of 6.0 m (19.69 ft.), ownership of which is registered in the name of the resident of this dwellings.

In order to bring the property into compliance, the manufacturing mobile/tiny homes must cease immediately and the mobile/tiny homes on site must be removed on or before February 26, 2022 when a re-inspection will be conducted.

The February 10, 2023 letter issued by the city states:

It has come to the attention of the City of [redacted] that the property at [rental unit's address] was being used for short-term rentals in contravention of Section 6.29 of the Zoning Bylaw.

In order to bring the property into compliance with the Zoning Bylaw you are required to cease all Short-Term Rental business operations on or before 2023 March 15 by removing all listings advertising the premises, and stop accepting current and future guest bookings.

The tenant rented the entire house, as the landlord authorized him to short-term rental the lower suite. The tenant stopped short-term renting the lower suite in November 2021 and sublet it as a long-term rental to a family of 7 people. The tenant continues to short-term rent one of the bedrooms of the upper suite, where he lives.

The landlord affirmed that she was aware the tenant was short-term renting parts of the rental unit, but not for 13 occupants. The landlord asked the tenant to stop short-term renting the rental unit after the February 10, 2023 letter but he continued to do so.

The tenant stated there are 7 occupants in the lower suite and 3 occupants in the upper suite, including himself. The parties did not have an agreement about the limit of occupants in the rental unit.

The landlord registered mailed the 10 Day Notice on May 6, 2023 with a ledger. The tenant does not recall receiving the 10 Day Notice. The tracking number is recorded on the cover page of this decision.

Canada Post indicates the package was mailed on May 6, notices were left for the tenant to receive the package on May 8 and 13, and the package was returned to the landlord on May 29, 2023.

The landlord submitted a copy of the May 6, 2022 Notice into evidence. It indicates the tenant did not pay rent in the amount of \$6,500.00, due on May 1, 2023. The effective date is May 16, 2023. The tenant did not dispute the Notice.

The landlord submitted a ledger dated April 27, 2023 (the ledger). It states the tenant has had some amount of rental arrears continuously from April 1, 2020 and on April 27, 2023 the tenant had rental arrears of \$6,500.00. The tenant submitted proof of rent payments from January 31, 2022 to February 28, 2023. These payments are recorded in the ledger.

The landlord testified the tenant did not pay rent due on May 1, 2023 and that the tenant had a balance of \$1,000.00 from April 2023. The tenant has not paid rent due on June 1, 2023 and currently owes \$12,000.00.

The tenant said that he paid the rent due on May 1, 2023 on April 30 and May 1, 2023 in the total amount of \$5,500.00 and that he paid rent due on June 1 on May 30 and June 1, 2023 in the total amount of \$5,500.00. The landlord affirmed the amounts paid by the tenant on April 30, May 1 and 30 and June 1, 2023 are for prior rental arrears.

Analysis

Pursuant to Rule of Procedure 6.6, 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 landlord has the onus of proof to establish that the notices to end tenancy are valid.

One Month Notice

The tenant confirmed receipt of the One Month Notice on February 25, 2023 and applied to dispute the One Month Notice on February 28, 2023. I find the tenant disputed the One Month Notice before the ten-day deadline to dispute the Notice, in accordance with section 47(4) of the Act.

Section 47(1) of the Act states the landlord may end a tenancy by giving notice if the tenant:

- (b) is repeatedly late paying rent
- (c) there are an unreasonable number of occupants in a rental unit
- (d) the tenant put the property at significant risk

RTB Policy Guideline 38 states "A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision."

I accept both parties' uncontested testimony that the tenant paid rent late several times.

The landlord did not present evidence to prove that she warned the tenant that he must pay rent on the due date.

Based on the testimony offered by both parties, I find the landlord did not warn the tenant in writing that the landlord was no longer accepting payment of rent after the first calendar day of the month.

The landlord has not been enforcing her right to receive payment in full on the first calendar day of the month. The legal doctrine of estoppel is a concept that restricts a party from relying on its full legal rights if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice in writing, that they are changing their conduct and are now going to enforce the right previously waived or not enforced, as stated in *Guevara v. Louie*, 2020 British Columbia Supreme Court 380.

The landlord is estopped from enforcing the provision of the tenancy agreement that rent is due in full on the first of the month by her past conduct of accepting late payments of rent.

The landlord is required to provide reasonable notice in writing to the tenant of her intention to reassert her right to be paid rent in full on the first calendar day of the month pursuant to the tenancy agreement.

I accept the uncontested testimony that the rental unit is a single family house containing a 5-bedroom upper suite and a 4-bedroom lower suite and that each suite has approximately 2,000 square feet.

I do not find that 13 occupants are an unreasonable number of occupants in the rental unit, considering its size.

The letters issued by the city on January 26, 2022 and February 10, 2023 do not mention the number of occupants in the rental unit.

The landlord did not explain how the tenant put the rental unit at significant risk.

Based on the foregoing, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

10 Day Notice

Based on the landlord's convincing testimony and the tracking number, I find the landlord served the 10 Day Notice in accordance with section 88(c) of the Act on May 6, 2023. I deem the tenant received the 10 Day Notice on May 11, 2023, per section 90(a) of the Act.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the Act states the tenant has to pay the rent overdue within 5 days after receiving the 10 Day Notice or dispute it.

Section 46(5) of the Act stated that if the tenant does not pay rent or dispute the 10 Day Notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice to end tenancy and must vacate the rental unit.

Section 46(5) of the Act is mandatory, and I do not have discretion as to its application.

The tenant did not dispute the 10 Day Notice.

I accept the uncontested testimony that the tenant paid \$5,500.00 by May 1, 2023. As the 10 Day Notice indicates the tenant had arrears of \$6,500.00 on April 27, 2023 and the tenant admits that he only paid \$5,500.00 by May 1, 2023, I find the tenant did not pay the rental arrears in full.

The tenant could have disputed the 10 Day Notice and disputed the amount of the rental arrears mentioned in the April 27, 2023 ledger and the 10 Day Notice. However, the tenant did not dispute the 10 Day Notice.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord's agent, gives the address of the rental unit, states the ground to end tenancy and it is in the approved form.

As the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(f) of the Act.

Based on the above, as the landlord served the 10 Day Notice, the tenant did not dispute it, did not pay rent in full and continues to occupy the rental unit, I find the

landlord is entitled to an order of possession, in accordance with section 55(2)(b) of the Act.

Effective date of the Order of Possession

RTB Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession, considering the length of the tenancy.

Considering the tenant has been occupying the rental unit since at least 2018, I find it reasonable to extend the effective date of the order of possession to 10 calendar days after service.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession and that the tenant must pay rent until the end of the tenancy and compensation for overholding rent until the day he moves out.

Filing Fees

As both parties were partially successful with their applications, each party will bear their own filing fee.

Conclusion

The One Month Notice is cancelled.

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

The landlord must serve the tenant **the order of possession** in two calendar days after the date of this decision, in accordance with section 88 of the Act.

Both parties are at liberty to submit monetary claims regarding this tenancy.

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: June 30, 2023

Residential Tenancy Branch