Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROOKSIDE REALTY LTD 1344067 BC LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL, CNC-MT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask us to cancel a One-month Notice to End Tenancy for Cause, received by the tenants in person on 30 June 2023 [the 'Notice'].

The landlords also applied for Dispute Resolution, and ask us to uphold the Notice and grant exclusive possession of the rental unit in their favour. They also want the tenants to reimburse them for the $100.00 filing fee for this application.

The corporate landlords appeared at the *in-camera* hearings of this dispute by way of agents on 30 October and 3 November. The tenants also appeared, along with an advocate.

Note that we refer to the parties in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Issues to be Decided

Was the Notice effective?

If it was, then are the tenants conclusively presumed to have accepted the end of this tenancy?

Background and Evidence

The tenants' advocate told us the following about the tenants' circumstances:

1. they have lived in this rental unit for almost 20 years;
2. they are now 55 years old; and
3. they are almost illiterate.

The landlords received complaints from other occupants of the rental building about the tenants' smoking. In response, the landlords wrote a letter to the tenants on 5 May [the 'Letter'], on the following terms:

> We have observed you smoking within the unit on April 27th. The smell of cigarette smoke has become prominent. Smoking inside is not permitted and against the rules of the building.
>
> You may be in violation of clause #11 and #12 of your addendum;
>
> 11.The tenant accepts that repeated (3 or more) notices of violation from a strata, neighbour or association will constitute a breach of a material term and the landlord's rights and can be subject to a 30-day notice to end tenancy.
>
> 12. That the dwelling is to be a smoke free dwelling and that no combustible materials may be used on the property except for self contained decorative candles.
>
> We ask that all smoking to be taken place in the designated smoking areas outside. Continued violation could result in a thirty-day notice to end tenancy.

On 15 May, the landlord met with the tenants to discuss their smoking, and the tenants signed a note acknowledging that they had received from the landlords 'notices' about the complaints of smoking. The landlords swore to us that these 'notices' included the Letter, along with written complaints from other occupants (dated 19 June) about the tenants' alleged smoking [the 'Complaints']. The tenants did not dispute that they received this Letter and those Complaints on that date.

Despite this Letter, the concerns about the tenants' smoking continued. And so the landlords issued the Notice to the tenants, and in drafting the Notice on or about 30 June, the landlords:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 31 July 2023; and
5. stated the basis for the Notice as:
    a. unreasonably disturbing other occupants of the rental property; and
    b. seriously jeopardizing the health or safety or lawful right of other occupants.

In the section of the Notice that provides 'Details of Causes', the landlords also wrote: 'Delivered two notices to [tenants' names] May 11th for infractions that previously occurred. May 6- June 19th- Numerous complaints'.

The landlords personally served the tenants with the Notice on 30 June. The tenants acknowledged service with their signatures.

The landlords swore to us that they explained the Notice to the tenants when they served it, along with the reasons that the tenants were being evicted [the 'Conversation']. The landlords recalled that the tenants were unhappy about receiving the Notice, and told them that it was unfair. The tenants did not dispute the landlords' recollection of this incident.

The tenants also told us that the day after receiving the Notice [*i.e.* 1 August], they took it to their 'Ministry worker'. This person explained the Notice to the tenants, and told them that they could dispute the Notice *via* the RTB, and gave the tenants contact information for the RTB in order to do so.

Despite this explanation, both parties agree that the tenants did not dispute this Notice until 21 July 2023.

The landlords also swore to us that on 10 August 2023 they sent to the tenants copies of the documents that the landlords wanted to rely upon in the hearing of this dispute. They swore that amongst those documents were, again, copies of the Letter; and of the Complaints. They also swore that the tenants accepted delivery of these documents by registered mail on 15 August 2023 (and the tenants did not dispute that).

Analysis

We have considered all the statements made by the parties and the documents to which they referred us during this hearing. And we have considered all the arguments made by the parties.

Was the Notice effective?

The tenants argue that this Notice was not effective (and should, therefore, be cancelled) because it failed to detail the causes for ending the tenancy. In sum, the tenants argue that the landlords did not provide sufficient detail in the 'Details of Causes' section for the tenants to understand why they wished to end the tenancy.

But what makes a Notice effective? Section 52 of the *Residential Tenancy Act* [the 'Act'] tells us that for a notice to end tenancy to be effective:

1. a landlord must sign it and date it;
2. it must give the address of the rental unit, and state the effective date of the notice;
3. it must also state the grounds for ending the tenancy; and
4. it must be in an RTB form.

The Act requires nothing more for a Notice to be effective and upheld, on its' face.

Even if we are wrong in this, consider that, while the 'Details of Causes' may not be readily understandable as written, they can be understood in their context. Consider:

1. about six weeks before issuing the Notice, the landlords gave the tenants the Letter, setting out their concerns about the alleged smoking, and that these concerns could result in the tenancy ending;
2. along with this Letter, the landlords gave the tenants copies of the Complaints about smoking;
3. when giving the Notice to the tenants, the landlords explained in the Conversation why they were issuing the Notice, *i.e.* because of their smoking; and
4. about two-and-a-half months before this hearing, the landlords again gave the tenants copies of the Letter and the Complaints.

We accept that the 'Details of Causes' included some incorrect dates: the landlords apparently wrote, 'May 11th' when referring to delivering the Letter and Complaints to the tenants on 15 May; and wrote 'May 6- June 19th-' when referring to the Letter (dated 5 May) and the Complaints (dated 19 June). Even if these discrepancies caused some confusion, the Conversation would have made the cause of the Notice clear, as would

have the actual content of the Letter and Complaints, which the tenants received twice, *i.e.* first on 15 May; second on 15 August.

We are not persuaded that the tenants could have been confused about why they received the Notice.

Based on the evidence at this hearing, we find the Notice is an effective one under section 52 of the Act.

Are the tenants conclusively presumed to have accepted the end of this tenancy?

The landlords argue that the tenants are conclusively presumed to have accepted the end of this tenancy because they failed to dispute the Notice within the 10 days permitted under section 47 (4) of the Act.

For their part, the tenants argue that, because of their illiteracy, it would be unfair to expect them to comply with section 47 (4) of the Act.

The issue of the tenants' illiteracy really questions whether the tenants understood the Notice and, more importantly, whether they understood how they could dispute the Notice.

The tenants argue that, because of their illiteracy, merely serving the Notice on them in accordance with the Act is insufficient, because they could not read or understand the Notice. When we asked the tenants what, in light of their illiteracy, the landlords ought to have done so that the tenants properly understood the Notice, the tenants replied that if someone had been there when the landlords served the Notice to explain the Notice to tenants, then that would have been sufficient.

The landlords swore to us that they did this very thing: when they personally served the Notice on the tenants, they spent time with the tenants explaining to them during the Conversation why the landlords wanted to end the tenancy. The tenants did not disagree that this Conversation happened.

Most significantly, however, the tenants themselves sought further explanation the very next day, and told us how they received an explanation from a 'Ministry worker' about how to dispute the Notice with the RTB.

But despite both the Conversation and the information from their 'Ministry worker' about how to dispute the Notice, the tenants did not take action to actually dispute the Notice for several crucial weeks.

We are satisfied that by 1 August the tenants had received sufficient explanation of the import of the Notice and what they could do to dispute it, but that they failed to dispute it until 21 July.

We also note, in relation to the above-mentioned argument regarding the efficacy of the Notice, that disputing a notice to end tenancy does not require any fulsome articulation of the reasons for disputing the notice, such that any confusion over the *cause* for this Notice would have prevented the tenants from filing a *dispute* of the Notice.

Based on the evidence before us, we find that the Notice is an effective notice, and that the landlords served it on the tenants on 30 June. The tenants concede that they did not apply to dispute this Notice until 21 July, which is well past the 10 days permitted by the Act.

According, therefore, to section 47 (5) of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on 31 July 2023.

Conclusion

As a result of this analysis, we make an Order of Possession in favour of the landlords.

The Supreme Court of British Columbia [the 'BCSC'] requires that in making an order of possession, we must consider what a reasonable effective date of that order should be. We asked the parties for argument on a reasonable date: the tenants submitted that 30 days were reasonable; the landlords argued that 15 days were reasonable.

We accept the tenants' argument: as they have lived in this rental unit for many years, and face challenges with their literacy, their submission that they have at least 30 days to prepare to move elsewhere is by no means unreasonable.

This order is effective 30 days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with our order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

We make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 6 November 2023

Residential Tenancy Branch