Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The ***Act***) in response to cross applications from the parties.

The Tenant filed their application on April 16, 2024. The Tenant seeks:

- Cancelation of the Landlord's One Month Notice to End Tenancy for Cause, signed by KLB on March 22, 2024 (the **Notice**).
- Extension of the time limit established under section 47 of the *Act* to dispute the Notice, pursuant to section 66 of the *Act*.
- An order suspending or setting conditions on the Landlords' right to enter the Rental Unit.

The Landlords filed their application on April 18, 2024, and they seek the following:

- An order of possession pursuant to the Notice.

No one attended the hearing for the Tenant. This hearing was scheduled to begin at 11:00 AM on June 13, 2024. The hearing began as scheduled and it lasted approximately 46 minutes.

KLB attended the hearing for the Landlords.

Service of Records

KLB acknowledged receipt of the Tenant's application and relevant documentary evidence. KLB testified that the Tenant or an agent of the Tenant brought two separate envelopes containing the Tenant's records to the Landlords' place of residence. Pursuant to KLB's testimony, I find the Tenant served the Landlords with their application and supporting records in accordance with sections 88 and 89 of the *Act*.

KLB testified that they served the Tenant with the Landlords' Proceeding Package and documentary evidence, by registered mail, on April 22, 2024. The Landlords submitted a Canada Post Customer Receipt bearing a tracking number, the Tenant's name, and the Rental Unit's address.

Pursuant to KLB's testimony and the Landlord's supporting records, namely the Landlord's Canada Post Customer Receipt, I find the Tenant is deemed served, per section 90 of the *Act*, with the Landlords' Proceeding Package and documentary evidence, by registered mail, in accordance with sections 88 and 89 of the *Act*, on April 27, 2024, the fifth day after the date of mailing.

On June 12, 2024 (the day prior to the hearing), the Landlords submitted an amendment form to the Residential Tenancy Branch to amend their application by adding a new monetary claim for unpaid rent. KLB testified that the amendment form was not served to the Tenant.

Rule 4.1 of the Residential Tenancy Branch *Rules of Procedure* states:

> An applicant may amend a claim by:
>
> - completing an Amendment to an Application for Dispute Resolution form; and
> - filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence on the Dispute Access site or with the Residential Tenancy Branch directly or through a Service BC Office.

However, Rule 4.3 states:

> Amended applications and supporting evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office as soon as possible and in any event early enough to allow the applicant to comply with Rule 4.6.

Rule 4.6 states (underlined for emphasis):

> As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.
>
> The applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.
>
> In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Therefore, the Landlords have not complied with Rule 4.6, and I cannot consider their additional claim. This hearing went ahead solely on the issues set out in the parties' unamended applications (set out under the Introduction section of my decision).

Background and Evidence

I have reviewed all evidence, including KLB's testimony, but I will refer only to what I find relevant to my decision.

KLB testified that this tenancy began on April 1, 2021, and that the current monthly rent is $800.00 per month, due on the first day of every month, with a security deposit of $450.00 and a pet damage deposit of $100.00.

KLB testified that they taped a copy of the Notice, along with a letter, to the Rental Unit's door on March 22, 2024.

KLB testified that on March 23, 2024, the Tenant sent a text message to the Landlord disputing KLB's method of service (KLB testified that the Tenant argued that the Notice must be personally served).

KLB testified that on March 24, 2024, the Tenant sent the Landlord a text message stating that "nothing you have stated is true", in reference to the Landlords' Notice and letter.

The Tenant filed their application on April 16, 2024. The Tenant has requested an extension of the time limit set out under section 47(4) of the *Act* to file a dispute (under section 47(4) of the *Act*, the Tenant had 10 days to file a dispute). The Tenant did not attend the hearing to explain why I should grant an extension, but in their paper application they have written the following in relation to extension of the time limit:

> **Please describe why you are filing after the dispute period**:
>
> Due to the current and ongoing stress brought on by the landlord and other tenants of the building it has been hard to find the help required to fill these forms out as I don't understand them too well.

KLB testified that they believe the Tenant had to travel 1.5 hours to a nearby town to seek counsel on how to respond to the eviction notice. They also testified that the Tenant claims not to have a computer, but that they have two phones.

KLB provided extensive testimony regarding the reasons why the Notice was issued to the Tenant. KLB referred me to several letters that they say were served to the Tenant regarding the Tenant's smoking habit inside the Rental Unit. The earliest warning letter submitted for consideration is dated December 27, 2021.

The Landlords submitted a copy of a February 25, 2024, letter, written by KLB, wherein KLB states that on February 25, 2024, during their inspection of the Rental Unit, they

were “overwhelmed by the smell of marijuana smoke, you had a pile of cigarette butts swept up on the floor, and there was evidence of smoking all over your table along with an open cigarette pack under your bed. You begged me to not evict you and promised to change, (sadly you had promised that last time).”

KLB testified that during the above inspection they took two pictures, which they submitted as evidence. In these pictures I can see a large pile of cigarette butts on the floor of the Rental Unit. I can also see cigarette butts on a table.

Analysis

Section 47 of the *Act* states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. **If** the tenant files an application to dispute the notice within time, the landlord bears the burden to prove the grounds for the One Month Notice.

Section 47(5) of the *Act* states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

Based on the evidence before me, namely the Tenant’s statements in their own application, and KLB’s testimony, I find it more likely than not that the Tenant received the Landlords’ Notice on March 22, 2024. This is stated in the Tenant’s own application. KLB testified that on March 23, 2024, and on March 24, 2024, the Tenant was referring to the Notice in text messages to KLB.

As to the method of service, both parties have stated that the Notice was attached to the Rental Unit’s door. This is an acceptable method of service of an eviction notice (section 88(g) of the *Act*).

The Tenant has applied for an extension of the time limit to dispute the Notice. I now turn my mind to section 66 of the *Act*, which provides me with the discretionary power to extend a time limit established by this *Act*, in exceptional circumstances. A time limit cannot be extended beyond the effective date of the notice in question. In this case, the Tenant had 10 days from March 22, 2024, to dispute the Notice. The Tenant did not do so until April 16, 2024. However, the Tenant filed their application prior to the effective date of the Notice, which was April 30, 2024.

In relation to what constitutes an exceptional circumstance, the Residential Tenancy Branch's Policy Guideline 36 states (underlined for emphasis):

> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.
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> Some examples of what might not be considered "exceptional" circumstances include:
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> - the party who applied late for arbitration was not feeling well
> - the party did not know the applicable law or procedure
> - the party was not paying attention to the correct procedure
> - the party changed his or her mind about filing an application for arbitration
> - the party relied on incorrect information from a friend or relative
>
> Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:
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> - the party was in the hospital at all material times
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> The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

In this case, the Tenant did not attend the hearing to provide testimony and evidence for why they filed their application late. However, in their application, they state:

> **Please describe why you are filing after the dispute period**:
>
> Due to the current and ongoing stress brought on by the landlord and other tenants of the building it has been hard to find the help required to fill these forms out as I don't understand them too well.

I do not find the above reason to be an "exceptional circumstance", but merely an excuse. Not understanding the law is not a valid reason. There is no evidence before me that the Tenant is suffering from a disability that would not allow them to read the instructions clearly outlined on the Notice. I also fail to understand what stress has to do with filing an application late.

I decline to use my discretion to extend the time limit as I cannot identify an exceptional circumstance.

Section 47 of the *Act* states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days of receiving the notice, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I find that the Tenant did not file their application in time and therefore they conclusively accepted that the tenancy ends. The Tenant's application to dispute the Landlords' Notice is dismissed, without leave to reapply.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application.

I have reviewed the Notice and I find it complies with the form and content of section 52 of the *Act*, because the Notice is signed and dated, it includes the correct effective date, it includes the Rental Unit's address and the Tenant's name, and the Landlords have included extensive detail explaining the ground for ending this tenancy.

Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Pursuant to section 55 of the *Act*, I order that this tenancy ends at **1:00 PM on June 27**, **2024**. I have discretion to extend the effective date of an order of possession in cases where the tenancy is long-standing. In this case the Tenant has been residing at the Rental Unit for over three years. However, KLB testified that the Tenant has not paid any portion of their June rent to date. This hearing took place on June 13, 2024. Considering the above factors, I find a two-week period is justified in the circumstances.

As this tenancy is ending and because the Tenant did not attend the hearing to provide evidence for why the Landlords' right to enter the Rental Unit must be restricted, I dismiss their application for an Order restricting the Landlords' access to the Rental Unit, without leave to reapply. The Landlords' application is granted in full.

Conclusion

The Tenant's application is dismissed in full, without leave to reapply. The Landlords' application is granted in full.

Pursuant to section 55 of the *Act*, I grant the Landlords an Order of Possession, which must be served to the Tenant as soon as possible, **effective June 27, 2024, at 1:00 PM.**

Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I caution the Tenant that any costs associated with enforcing the Order of Possession, including the costs associated with hiring a bailiff, may be recoverable from the Tenant, even after this tenancy ends.

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 13, 2024

Residential Tenancy Branch