



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ascent Real Estate Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, OPC, FF

Introduction

This was a cross-application hearing.

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on January 19, 2016 and to recover the filing fee cost from the landlord.

The landlord applied requesting an Order of possession based on a 10 day Notice to end tenancy for unpaid rent issued on February 4, 2016.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of hearing documents submitted by each. The landlords' evidence had been sent to the tenant via registered mail on February 23, 2016. The tenant had received the Notice of registered mail but did not retrieve the mail until approximately one week prior to the hearing. The tenant confirmed that she had ample time to review that evidence and was prepared to proceed.

The tenant confirmed that she had received two Notices to end tenancy; one on January 19, 2016 ending the tenancy for cause and another on February 4, 2016, ending the tenancy based on unpaid rent. The tenant confirmed that she had disputed only the Notice ending tenancy for cause.

The landlord confirmed that they have applied requesting an Order of possession based only on the Notice ending tenancy for unpaid rent issued on February 4, 2016.

Both parties agreed that their applications should be amended. The tenant said she wished to dispute the 10 day Notice ending tenancy for unpaid rent and cause. The landlord said she wished to request an Order of possession based on the two Notices. Therefore, by agreement, each application was amended. The tenant has disputed the two Notices to end tenancy and the landlord has requested an Order of possession based on the two Notices to end tenancy.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on January 19, 2016 be cancelled or must the landlord be issued an Order of possession?

Should the 10 day Notice ending tenancy for unpaid rent issued on February 4, 2016 be cancelled or must the landlord be issued an Order of possession?

Background and Evidence

The tenancy commenced on August 1, 2015 as a fixed-term to the end of July, 2016. Rent is \$1,600.00, due on or before the first day of each month. The landlord is holding a security and pet deposit in the sum of \$800.00 each.

At the start of the hearing the tenant confirmed receipt of a one month Notice to end tenancy for cause that was issued on January 19, 2016. The Notice had an effective date of February 29, 2016. The tenant thinks she received the Notice on January 19, 2016. The tenant confirmed the Notice was posted to her door. The tenant could not recall the date she removed the Notice from the door but she would have seen it when she came home from work.

The landlords' caretaker provided affirmed testimony that the one month Notice to end tenancy for cause was posted to the tenants' door on January 19, 2016, sometime later in the morning.

The one month Notice to end tenancy for cause included one reason:

that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Notice indicated that the tenant must pay the rent or apply to cancel the Notice within ten days or the tenant would be presumed to have accepted the end of the tenancy.

Initially the tenant said she applied to cancel the one month Notice ending tenancy on February 4, 2016. Later in the hearing the tenant said that she had applied to cancel this Notice within the required time limit. The tenant did not supply any evidence of a

previous date she had submitted an application but was sure she had applied to cancel the Notice within the time required.

The tenant confirmed receipt of a 10 day Notice to end tenancy for unpaid rent that was issued on February 4, 2016. The Notice had an effective date of February 17, 2016. The tenant confirmed that she would have received this Notice when she returned home from work on that date but she could not recall the date she did receive the Notice.

The landlords' caretaker testified that she posted the 10 day Notice ending tenancy for unpaid rent to the tenants' door on February 4, 2016. The Notice was posted at approximately 11:00 a.m.

The 10 day Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,600.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant said she ignored the 10 day Notice as she had paid rent. Rent is paid via automatic withdrawal from the tenants' account. The landlord stated that the rent withdrawal for February 1, 2016 was returned as NSF. The tenant said there had been a problem with her accounts, caused by her employer depositing funds to the wrong account. The tenant confirmed that she paid the rent by way of two monetary orders on February 18, 2016.

Later in the hearing when the tenant was asked why she did not pay her rent within five days of receiving the Notice ending tenancy, the tenant said she did not recall receiving the Notice on the door. The tenant said she could not make "heads or tail" of the Notice. The tenant then realized she had to pay rent so she made the payment. The tenant said she just did not recall the Notice. The tenant said she was confused by the Notices as she has received so many.

The tenant said that she wished to respond to the complaints that had been made that resulted in the landlord issuing the one month Notice to end tenancy for cause. During the hearing the tenant was informed that the decision would be based on the application time limits.

The landlord pointed to an email sent by the tenant on February 2, 2016. The tenant informed the landlord that she would not pay February rent if she needed to move out as she required the funds to a rent another unit. The tenant explains in the email that her pay coding issue had been resolved, but the landlord insisted the payment was NSF. The tenant stated:

"I have February rent but will use part of it for new place. I am still disputing this issue."

(Reproduced as written)

The landlord replied via email that the tenant was obligated to pay February rent as she was living in the unit until February 28, 2016. The landlord explained that rent for March had been “cancelled” as the tenant should vacate by then. The tenant was told she must pay rent when occupying the suite and that she was illegally withholding her rent.

Analysis

At the start of the hearing the tenant testified that she received the one month Notice to end tenancy for cause, by removing the Notice from her door when she came home from work. Later in the hearing, at the point where the tenant realized that she had not applied to dispute the Notice within the required time limit, the tenant changed her testimony. I explained to the tenant during the hearing that altering her testimony reflected poorly on her credibility. The tenant also began to say she was confused and that she had applied to cancel the one month Notice within the applicable time limit.

I find that the tenants’ testimony was inconsistent and that the testimony was altered only when the tenant understood that the truth of the matter was not to her benefit.

I find, on the balance of probabilities that the tenant was correct when she gave her initial testimony, that she removed the Notice, served by posting on January 19, 2016, when she returned home from work. In an abundance of caution I have applied the deemed service provision of section 90 of the Act and find that the Notice is deemed received on January 22, 2016. The tenant then had until Monday, February 1, 2016 to apply to cancel the Notice ending tenancy. The tenant did not dispute the Notice until February 4, 2016; the date she filed her application by paying the filing fee.

Therefore, Pursuant to section 47(5) of the Act I find that the tenant is presumed to have accepted the tenancy ended effective February 29, 2016; the effective date of the Notice.

In relation to the 10 day Notice to end tenancy, Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. I find, on the balance of probabilities, that the tenant received the 10 day Notice to end tenancy by the deemed date, February 7, 2016. Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant had until February 12, 2016 to pay the rent in full or to dispute the Notice.

The tenant and landlord have agreed that the tenant disputed the Notice as part of her February 4, 2016 application. However, as the tenant did not pay the rent until February 18, 2016 I find, pursuant to section 46(5) that conclusive presumption would apply. However, the tenancy had already ended based on the one month Notice to end tenancy for cause. The tenant was then over-holding.

Therefore, I find that the tenancy ended effective February 29, 2016; the effective date of the one month Notice ending tenancy for cause.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlords' application has merit I find, pursuant to section 71(2) of the Act that the landlord may deduct the \$100.00 filing fee from the security deposit. The landlord is now holding a security deposit in the sum of \$700.00.

The tenants' application is dismissed.

Conclusion

The landlord is entitled to an Order of possession based on a one month Notice to end tenancy for cause.

The landlord may deduct the \$100.00 filing fee cost from the tenants' security deposit.

The tenants' application is dismissed.

This decision is final and binding and 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 21, 2016

Residential Tenancy Branch

