Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ISLAND COMMUNITY MENTAL HEALTH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB FF – Landlord's Application
MT CNR – Tenant's Application

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlord and Tenant. The Landlord filed on November 2, 2016 seeking an Order of Possession for breach of an agreement and to recover the filing fee. The Tenant filed on November 21, 2016 seeking more time to file her application and to cancel a notice to end tenancy issued for unpaid rent.

The hearing was conducted via teleconference and was attended by four agents for the corporate Landlord (the Landlords), the Tenant, and the Tenant's Legal Advocate (Advocate). Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Only two of the four agents for the Landlord made oral submissions. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Tenant requested that her Advocate represent her as her Agent. As such, all submissions made by the Advocate or Tenant are listed below as being made by the Tenant.

The Landlords confirmed receipt of the Tenant's application for Dispute Resolution, notice of hearing documents, and her evidence submissions. The Advocate affirmed they sent the Landlords copies of the same evidence that was submitted to the Residential Tenancy Branch (RTB).

The Tenant confirmed receipt of the Landlord's application for Dispute Resolution and notice of hearing documents. However, the Tenant could not recall receiving copies of the Landlord's evidence documents. The Advocate indicated that she had not seen any evidence documents submitted by the Landlords.

The Landlords testified they served the Tenant with copies of the same evidence that was submitted to the RTB. That evidence consisted of, in part, copies of: the tenancy agreement; the one page subsidy application dated July 14, 2016 which stated the Tenant was to move or find an appropriate room-mate and Oct 31/16 was the deadline; and a letter issued by the Landlord dated July 14, 2016 indicating the Tenant's rent portion would be $320.00 and the Tenant would need to find a new apartment or a suitable roommate that is approved by the Landlord before October 1, 2016.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to an Order of Possession for breach of an agreement?
2. Should the Tenant be granted more time to file her application to dispute the Landlord's Notice to end tenancy for unpaid rent?
3. If not, should the Landlord be granted an Order of Possession based on the Tenant's application for Dispute Resolution?

Background and Evidence

The Tenant entered into a month to month tenancy agreement which commenced on June 28, 2012. As per the tenancy agreement market value rent was $510.00 payable on the first of each month. The Tenant applied for subsidized rent annually and effective August 1, 2016 her monthly rent portion was $320.00.

The Advocate presented evidence regarding the Tenant's request for more time to make her application to dispute the Landlord's Notice to end tenancy and argued that given the Tenant's emotional and cognitive barriers she was not able to understand the prescribed deadlines relating to the notice to end tenancy. The Tenant had a witness standing bye to provide testimony relating to the Tenant's cognitive abilities and mental health issues. After consideration of the Advocate's oral and written submissions, and the medical documentation before me, I informed the parties that I did not need to hear from the Tenant's witness.

The Landlords were given the opportunity to respond to the Tenant's request for more time to file her application. No arguments or evidence was submitted to dispute the Tenant's request for more time other than the Landlords stating they did not agree with the request.

The Landlords submitted that on November 3, 2016 they personally served the Tenant with a Notice to end tenancy for unpaid rent. They stated that Notice listed an effective

date of November 14, 2016. The Tenant did not dispute the aforementioned details of the Landlord's Notice.

The Landlords sought an Order of Possession based on an email they received from the Tenant on September 30, 2016. A copy of that email was submitted into evidence and stated in part as follows:

> *Thank you.*
> *This is to inform you that I will be moving on the last day of Oct 2016.*
> *[Tenant's first name]!*
>
> [Reproduced as written excluding Tenant's first name]

The Landlords asserted the aforementioned email was the Tenant's notice to end her tenancy with the Tenant's "electronic signature". The Landlord submitted the Tenant breached that agreement as she ought to have moved out based on that email notice

The Landlords argued the Tenant was "over housed" as she was the only person residing in a two bedroom subsidized unit. They asserted they gave the Tenant a three month grace period to find a roommate and failing that the Tenant would have to move out.

The Tenant disputed the Landlords' submissions and argued the Tenant's email could not be considered a proper notice to end the tenancy as it did not comply with the form and content required under section 52 of the *Act.* In addition, the Tenant argued that email was not served upon the Landlord in a method provided for in section 88 of the *Act.*

The Tenant argued she was not in breach of an agreement as she informed the Landlord that her daughter had agreed to move in and be her roommate. The Tenant submitted evidence that she emailed the Landlord her daughter's application for tenancy September 30, 2016 shortly after emailing the Landlord that she would be moving out.

The Landlord testified the Tenant's daughter told them she had changed her mind and would not be moving into her mother's unit. The Tenant asserted she was not told about that conversation prior to this hearing.

Both parties confirmed the Tenant was never advised that her subsidized rent would increase from $320.00 to $956.00 if she was unsuccessful in finding a roommate by October 31, 2016.

The Landlord confirmed that in the past the Tenant would complete an application for subsidy annually which determined her rent until the following application cycle. The Landlord pointed to the subsidy application which was completed on July 14, 2016 upon which the Landlord wrote: "We have given tenant a 3 month grace period to either move or find an appropriate room-mate. Oct 31/16 is deadline."

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I accept the Tenant's submissions that her September 30, 2016 email does not meet the form and content requirements of the *Act.* Section 52 of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must: be signed and dated by the landlord or tenant giving the notice; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy; and when given by a landlord, be in the approved form.

In this case the Tenant's email did not list the rental unit address and did not include the Tenant's signature. Rather, the email simply listed the Tenant's first name and did not include an electronic signature as suggested by the Landlord.

In addition, I find the email was not served upon the Landlord in a manner provided by section 88 of the *Act.* Section 88 of the *Act* provides methods of service for documents other than an application for Dispute Resolution. Those methods include: personal service; ordinary mail; registered mail; leaving a copy with an adult who resides with the person or with a person at the Landlord's office; leaving a copy in the person's mailbox or conspicuous place where the person resides; posted to the door; by fax; by a means prescribed in the regulations; or as ordered by the director. Currently, there is no provision for service by email.

While I accept the Landlords' submissions that the Tenant was told she needed to find a roommate by October 31, 2016, as written on the subsidy application dated July 14, 2016, I do not accept the Tenant entered into a mutual agreement to end the tenancy and move. Rather, the evidence supports the Tenant was told to move.

Based on the above, I find the Landlords submitted insufficient evidence to prove the Tenant was in breach of an agreement as the email was found to be an invalid notice to end tenancy. Accordingly, I dismiss the Landlord's application in its entirety.

Section 46(4) of the *Act* provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent or dispute the notice by making an application for Dispute Resolution.

The Tenant filed for more time to make her application to dispute the 10 Day Notice pursuant to section 66(1) of the *Residential Tenancy Act* which allows for an extension to a time limit established by the *Act;* but only in exceptional circumstance.

Section 66(3) of the *Act* stipulates that the director **must not** extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice [my emphasis added by bold text].

Notwithstanding the evidence before me relating to the Tenant's cognitive issues, the undisputed evidence was some form of a Notice to end tenancy was personally served to the Tenant on November 3, 2016 which listed an effective date of November 14, 2016. That evidence was undisputed. The Tenant did not file her application for Dispute Resolution until November 21, 2016, seven days after the effective date of that Notice. Therefore, I **must not** grant the Tenant's request for more time to dispute the Notice, pursuant to section 66(3) of the *Act.*

Section 55(1) of the *Act* stipulates 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 (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Neither party submitted a copy of the Notice to end tenancy into evidence; therefore, I cannot determine if the Notice issued November 3, 2016 complied with the form and content requirements set out in section 52 of the *Act.* Accordingly, I find there was insufficient evidence before me to meet the requirements of section 55(1) of the *Act.* As such, I declined to issue the Landlord an Order of Possession relating to the Tenant's application for Dispute Resolution.

Conclusion

The Landlord's and Tenant's applications for Dispute Resolution were both dismissed.

This decision is final, legally 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: December 22, 2016

Residential Tenancy Branch