



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDL, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid or loss of rent; and, compensation for cleaning and removal of abandoned possessions. An agent appeared on behalf of the landlord; however, there was no appearance on part of the tenant despite leaving the teleconference call open at least 30 minutes.

Since the tenant did not appear for the hearing, I explored service of hearing documents upon the tenant. The landlord's agent submitted that the tenant's current address of residence was determined and the hearing package was sent to her via registered mail on December 11, 2018 and successfully delivered on December 18, 2018. The landlord provided a copy of the registered mail receipt, including tracking number, and evidence concerning the tenant's current address of residence. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Preliminary and Procedural Matter – was application made within time limit to make claim?

The landlord filed this application on December 4, 2018. I determined it necessary to explore whether the landlord had filed this application within the time limit for doing so.

Section 60 of the Act provides the statutory time limit for making an application. It provides:

- 60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded

Since the limitation period is driven by the end of tenancy date, I proceed to determine when this tenancy ended.

Section 44 of the Act provides for all the ways a tenancy may end. Section 44(1)(a)(ii) provides that a tenancy ends pursuant to a notice to end tenancy given by a landlord for unpaid rent under section 46 of the Act. Section 44(1)(d) also provides that a tenancy ends when the tenant vacates or abandons the rental unit.

On March 8, 2016 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant with a stated effective date of March 23, 2016. The tenant did not dispute the 10 Day Notice and the landlord applied for an Order of Possession and Monetary Order (file number referenced on the cover page of this decision). A hearing was held on May 18, 2016 and the Arbitrator presiding over that proceeding provided the following in the analysis section of her decision: “In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective May 30, 2016 as requested.” [My emphasis underlined].

In the May 18, 2016 decision, the Arbitrator also awarded the landlord unpaid rent of \$710.00 for the period up to and including March 2016 and compensation for “over holding” for the month of April 2016. Over holding is a term defined in section 57 of the Act. Section 57 provides: “over holding tenant means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended” and a landlord may be awarded compensation for the period of over holding. [My emphasis underlined].

Based on the decision of May 18, 2016, I find the tenancy came to an end on the effective date of the 10 Day Notice, which was March 23, 2016, as this entitled the

landlord to the Order of Possession it was provided on May 18, 2016. This is also consistent with the previous Arbitrator's characterization of rent due for "over holding" for the month of April 2016.

In this case, I heard that despite receiving an Order of Possession effective May 30, 2016, the landlord gave the tenant multiple opportunities to vacate the rental unit on her own accord in an effort to avoid hiring the court bailiff which was expected to cost a significant amount of money. The landlord testified that the tenant eventually gave up possession of the rental unit on her own accord on February 24, 2017 but the tenant did not pay any rent for May 2016 onwards.

The landlord provided a number of written communications the landlord sent to the tenant after the May 18, 2016 hearing. Upon review of those communications I noted that the landlord gave the tenant multiple opportunities to vacate the rental unit but also referred to the Order of Possession it had and that it would be enforced if the tenant did not vacate. I find the landlord's actions to be consistent with allowing the tenant to over hold a number of months after the tenancy ended but not reinstatement of the tenancy especially considering there was no demand for rent payments for this period of time in the correspondence presented as evidence. During the hearing, the landlord's agent confirmed that the landlord was not agreeable to reinstating this tenancy but was trying to avoid removal of the tenant by the bailiff and the bailiff costs in allowing the tenant more time to vacate.

In light of all of the above, I find the tenancy ended on March 23, 2016 and the tenancy was not reinstated after that. Therefore, I find the landlord's application that was filed on December 4, 2018 is beyond the two year time limit for making a claim against the tenant and I do not consider the landlord's application further.

Conclusion

I find the tenancy came to an end on March 23, 2016 and the landlord's claims against the tenant ceased to exist two years later on March 23, 2018. Since the landlord filed this claim on December 4, 2018 I find the landlord is outside of the time limit for making a claim against the tenant and I decline to hear this case.

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: March 26, 2019

Residential Tenancy Branch