Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL-S, MNDCL-S, CNR, LAT, PSF, FFT, FFL

Introduction

A hearing was convened on January 16, 2020 in response to cross applications.

These Applications for Dispute Resolution were the subject of a dispute resolution proceeding on October 29, 2019. On November 05, 2019 the Tenant submitted an Application for Review Consideration and related documents to the Residential Tenancy Branch.

The Residential Tenancy Branch Arbitrator considering the review application ordered this new hearing.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

As outlined in my interim decision of January 18, 2020, I was not satisfied that the Landlord's Application for Dispute Resolution and evidence had been received by the Tenant. Consideration of the Landlord's Application for Dispute Resolution was therefore adjourned. A hearing was convened on March 30, 2020 to consider the merits of the Landlord's Application for Dispute Resolution.

In my interim decision of January 18, 2020, the Landlord was given authority to re-serve her Application for Dispute Resolution and evidence to the Tenant. The Landlord and the Tenant agree that these documents were served to the Tenant on February 12,

2020. As such, the Landlord's evidence was accepted as evidence for these proceedings.

On March 23, 2020 the Tenant submitted evidence to the Residential Tenancy Branch in response to the Landlord's Application for Dispute Resolution. The Tenant stated that this evidence was served to the Landlord, via email, on March 23, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to provide services or facilities, for authority to change the locks, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement, and to recover the fee for filing an Application for Dispute Resolution.

The merits of the Tenant's Application for Dispute Resolution were considered at the hearing on January 16, 2020. The issues in dispute in the Tenant's Application for Dispute Resolution were considered in my interim decision of January 18, 2020 and will not, therefore, be addressed in this final decision.

At both hearings the parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence has been reviewed, including all of the written submissions. I note that much of the evidence, including the written submissions of the Tenant, is repetitive.

Preliminary Matter #1

At the hearing on March 30, 2020, the Tenant requested an adjournment for the purposes of obtaining an advocate.

The Tenant stated that sometime in February of 2020 she contacted an advocate because she needs help with the proceedings. She stated that she was unable to find an advocate in her own community. She stated that she had a meeting scheduled with an advocate in a neighboring community, on March 01, 2020.

The Tenant stated that she cancelled her meeting with the advocate due to the current health crisis. She stated that she was unable to meet with the advocate over the telephone because of the extensive amount of information she had to share with the advocate.

The Landlord opposed the request for an adjournment. She argued that the Tenant had "plenty of time to get ready" and that she wants to regain possession of her rental unit.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure allow me to adjourn a hearing any time after the start of the hearing, providing the circumstances warrant an adjournment.

When considering an adjournment, Rule 7.9 of the Residential Tenancy Branch Rules of Procedure requires me to consider the oral and written submissions of both parties, which I have done.

When considering an adjournment, Rule 7.9 of the Residential Tenancy Branch Rules of Procedure requires me to consider the likelihood of the adjournment resulting in a resolution. As suggested by Residential Tenancy Branch Policy Guideline #45, an adjournment might be granted if the parties are actively involved in reaching a settlement. It is abundantly clear to me that these parties are not able to resolve this dispute by mutual agreement.

When considering an adjournment, Rule 7.9 of the Residential Tenancy Branch Rules of Procedure requires me to consider whether the adjournment is required to provide a fair opportunity for a party to be heard. This is a highly important principal of natural justice.

Residential Tenancy Branch Policy Guideline #45 suggests that one of the situations in which a fair opportunity to be heard might be satisfied by an adjournment is when the matter is complex, and a party requires the help of a lawyer or legal advocate. During these proceedings the Tenant has raised several legal arguments, both orally and in writing. On the basis of her oral and written submissions, I am satisfied that she understands the issues in dispute. I cannot conclude that she requires an advocate to act on her behalf, as she has presented her submissions and legal arguments better than most tenants that come before me.

Residential Tenancy Branch Policy Guideline #45 suggests that one of the situations in which a fair opportunity to be heard might be satisfied by an adjournment is when the party has a language or cognitive barrier or significant medical condition. There is no suggestion that the Tenant requires an adjournment for these reasons.

When considering an adjournment, Rule 7.9 of the Residential Tenancy Branch Rules of Procedure requires me to consider the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment. I find that the Tenant cancelled the meeting she had scheduled with the advocate on March 01, 2020. While I accept that the Tenant may have been wise not to personally meet with the advocate on March 01, 2020 de to the current health crisis, I find it would have been entirely reasonable to communicate with the advocate by telephone, if only to determine whether the advocate had any valuable input.

I find it entirely possible, given the submissions that Tenant has already made, that an advocate would not have been able to provide any significant assistance to the Tenant. I find it was incumbent upon the Tenant to at least communicate with the advocate by phone to determine if the advocate could assist. I therefore find that the request for an adjournment is, in large part, due to the neglect of the Tenant.

When considering an adjournment, Rule 7.9 of the Residential Tenancy Branch Rules of Procedure requires me to consider the possible prejudice to each party. I find that an adjournment greatly prejudices the Landlord, as the Tenant has remained in the rental unit long after the effective date of the Four Month Notice to End Tenancy and that she is not currently paying rent. I find that it would be very unfair to the Landlord to delay these proceedings any further.

The Tenant's request for an adjournment was denied.

Preliminary Matter #2

In the Landlord's Application for Dispute Resolution, the Landlord applied for compensation for two months of unpaid rent, in the amount of $700.00. At the hearing on March 30, 2020, the Landlord explained that this was a claim for unpaid rent for July and August of 2019.

At the hearing on March 30, 2020, the Landlord applied to amend her Application for Dispute Resolution to include unpaid rent for the period between September 01, 2019 and March 31, 2020. I find that it was reasonable for the Tenant to conclude that the

Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Preliminary Matter #3

At the hearing on March 30, 2020, the Landlord applied to amend her Application for Dispute Resolution to include an application for an Order of Possession on the basis of the Four Month Notice to End Tenancy that was served pursuant to section 49 of the *Act*. The application is granted.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure stipulates that an Application for Dispute Resolution can be amended at a hearing in circumstances that can be reasonably anticipated. In my interim decision of January 18, 2020, the Tenant was advised that I would grant a request to amend the Landlord's Application for Dispute Resolution to include an application for an Order of Possession on the basis of the Four Month Notice to End Tenancy, if the Landlord made that request at the reconvened hearing. On the basis of the information provided in my interim decision, I find that the Tenant could reasonably anticipate the Landlord's Application for Dispute Resolution would be amended to include an application for an Order of Possession on the basis of the Four Month Notice to End Tenancy.

My decision to grant this amendment was made, in large part, because the circumstances of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and the Four Month Notice to End Tenancy are interconnected. For me to determine whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which was the primary issue in dispute at these proceedings, was effective, it was necessary for me to also determine whether the Four Month Notice to End Tenancy was effective.

It seems reasonable to me that if I determine that the tenancy has ended on the basis of the Four Month Notice to End Tenancy and the Tenant continues to occupy with rental unit, that I should issue an Order requiring the Tenant to vacate the rental unit, in accordance with the authority delegated to me by section 62(3) of the *Act.*

Conversely, it seems unreasonable for me to determine that this tenancy should end on the basis of the Four Month Notice to End Tenancy, and then leave it to another

Arbitrator to consider a claim to grant an Order of Possession, as that Arbitrator would need to consider the identical issues.

Rules 4.1 and 4.6 of the Residential Tenancy Branch Rules of Procedure permit an applicant to amend an Application for Dispute Resolution prior to the start of the proceedings by adding a claim, providing notice of the amendment is served to the Respondent not less than 14 days prior to the date of the hearing.

By informing the Tenant in my interim decision that the Landlord's application to amend her Application for Dispute Resolution would be granted at the reconvened hearing, I find that the Tenant has had more notice of the amendment than if the Application for Dispute Resolution had been amended in accordance with Rules 4.1 and 4.6. I therefore cannot conclude that the Tenant was disadvantaged by my decision to allow the amendment.

Preliminary Matter #4

At the conclusion of the hearing on March 30, 2020, each party was given the opportunity to present relevant submissions that they had not yet had the opportunity to make. The Landlord stated that she had no additional submissions.

At the conclusion of the hearing on March 30, 2020, the Tenant repeatedly stated that she has many more submissions, which she believed was being prevented from presenting. I believe the Tenant was referring, in part, to her attempts to argue the merits of the Four Month Notice to End Tenancy. The Tenant was repeatedly prevented from discussing the merits of that Notice, for reasons explained in my analysis.

I believe that the Tenant's reference to being prevented from making submissions also relates to my decision to deny her application for an adjournment. The Tenant repeated her request for an adjournment on several occasions after she had been advised the request was denied. Each time she raised the issue, she was advised that my decision on the request had been rendered and that she was not permitted to reargue that issue.

At the conclusion of the hearing the Tenant was advised that she could introduce any new, relevant submission, providing it did not relate to the merits of the Four Month Notice to End Tenancy or my decision to deny her application for an adjournment. This opportunity was made available to the Tenant on at least five occasions. No further

opportunities were made available to the Tenant after she declared that she would not say anything else without consulting with legal counsel.

I am satisfied that the Tenant was provided with a fair and reasonable opportunity to make submissions during these proceedings, which lasted for a total of approximately 95 minutes.

Issue(s) to be Decided in my final Decision

Is the Landlord entitled to an Order of Possession on the basis of a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities?
Is the Landlord entitled to an Order of Possession on the basis of a Four Month Notice to End Tenancy?
Is the entitled to a monetary Order for unpaid rent and to retain all of part of the security deposit?
Is the Landlord entitled to recover the fee for filing an Application for Dispute Resolution?

Background and Evidence provided at the Reconvened Hearing

The Tenant argued that the Four Month Notice to End Tenancy for Landlord's Use that was served to her in September of 2018 is not valid because she was only served with the first two pages of the Notice. The Notice clearly indicates that it is a three page document. The Landlord stated that she is meticulous with her paper work and she is certain that she served the Tenant with all three pages of the Notice.

On the first page of the Four Month Notice to End Tenancy, it clearly declares that the Tenant has “the right to dispute the Notice within 30 days of receiving it by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400-5021 Kingsway in Burnaby. If you do not apply within the required time frame, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice”.

The Tenant stated that she read the first page of the Four Month Notice to End Tenancy and that she understood she was required to dispute the Notice within thirty days of receiving it. She stated that she did not dispute the Notice because she concluded that

she had not been served with a valid Notice, as she was not served with all three pages of the Notice.

The Tenant attempted, on several occasions during the hearing, to dispute the merits of the Four Month Notice to End Tenancy, including whether it was served in good faith. The Tenant was repeatedly prevented from discussing the merits of the Four Month Notice to End Tenancy, because she did not file an Application for Dispute Resolution to dispute that Notice and is therefore conclusively presumed to have accepted the tenancy ended on the basis of the Four Month Notice.

The Landlord and the Tenant agree that the Tenant has not paid any rent for the period between August 01, 2019 and March 30, 2020. The Tenant stated that her rent is paid by the Provincial Government and that the rent would have been paid for those months if the Landlord had simply assured the Government that their tenancy agreement continued after July 31, 2019. The Landlord stated that she did not provide the Government with that information, as she understood that would reinstate their tenancy agreement, which she did not wish to do.

The Landlord stated that she did not get rent for July of 2019 and the Tenant stated that July rent was provided to the Landlord by the Provincial Government. The Tenant submits that rent is typically paid in advance to the Landlord. In other words, rent for July would be paid to the Landlord in late June.

The Tenant submitted a document from the Provincial Government, titled a Cheque History Query, which appears to be for the benefit month of June of 2019. The document indicates that $350.00 was sent to the Landlord, although it does not indicate the date it was sent.

The Tenant submitted a document from the Provincial Government, titled a History Report. There is a note on this report, dated June 20, 2019, which indicates the Landlord advised that rent was not being charged for July and that the Landlord requested that no further rent be sent to her. The note indicates that the Worker has changed the Tenant's address to NFA; that the Worker has "end dated rent direct" and "end dated rental expenses".

At the bottom of the "History Report", the report indicates that on May 27, 2019 $350.00 was paid to the Landlord, by way of cheque. The Tenant submits that this is rent for June of 2019, as rent benefits are always paid in advance.

Near the bottom of the “History Report”, the report appears to indicate that on June 20, 2019 the Tenant was entitled to a rent benefit of $350.00. There is nothing beside the entry that suggests the $350.00 was paid to the Landlord, by way of cheque. The Tenant submits that this is rent for July of 2019, as rent benefits are always paid in advance.

The Tenant submitted an electronic communication from the Landlord, dated July 27, 2019, in which the Landlord declared that you “already got your free month rent”.

The Tenant argued that the Landlord reinstated the tenancy when she accepted rent for the period between February 01, 2019 and July 31, 2019.

The Tenant argued that the Landlord waived the Four Month Notice to End Tenancy, and thereby reinstated the tenancy, when she did not diligently pursue an Order of Possession on the basis of the Four Month Notice to End Tenancy.

Analysis

As noted in my interim decision of January 18, 2020, I concluded that the Landlord and the Tenant entered into a tenancy agreement that required to pay monthly rent of $350.00 by the first day of each month.

As noted in my interim decision of January 18, 2020, I concluded that the Landlord did not have the right to end the tenancy on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was served on August 20, 2019, pursuant to section 46(1) of the *Act*. As the Landlord did not have the right to end this tenancy pursuant to section 46(1) of the *Act*, I dismiss the Landlord’s application for an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

In my interim decision of January 18, 2020, I concluded that the tenancy ended on July 31, 2019, on the basis of the Four Month Notice to End Tenancy that was served pursuant to section 49 of the *Act*, and that the Tenant was required to vacate the rental unit by July 31, 2019.

Prior to making my decision that the tenancy ended on the basis of the Four Month Notice to End Tenancy, I had not heard the Tenant's submission that she did not receive all three pages of the Notice. I will consider that submission here.

Section 49(7) of the *Act* stipulates, in part, that a notice to end tenancy that is served pursuant to section 49 of the *Act* must comply with section 52 of the *Act*. Section 52(e) of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and, when given by a landlord, be in the approved form.

When a landlord serves a notice to end a tenancy, the onus is on the landlord to establish that all pages of the notice were served to the tenant. I find that the Landlord has submitted insufficient evidence to establish that the third page of this Four Month Notice to End Tenancy was served to the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that all 3 pages were served or that refutes the Tenant's testimony that the third page was not served.

Regardless of whether or not the Tenant received the third page of the Four Month Notice to End Tenancy, I find that the Tenant was aware of her obligation to dispute the Notice within thirty days of receiving. This finding is based on the testimony of the Tenant, who acknowledged that she read the information on the first page of the Notice which declares that a tenant has right to dispute the Notice within 30 days of receiving it by filing an Application for Dispute Resolution with the Residential Tenancy Branch and that if a tenant does not apply within the required time frame, they are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the Notice.

As the information about disputing the Four Month Notice to End Tenancy is provided on the first page, rather than the third page, of the Notice, I find that the Tenant's understanding of her need to dispute the Notice within thirty days was not, or should not have been, influenced by the third page of the decision.

Section 49(9) of the *Act* stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. **"**Conclusively presumed" means that something is presumed by law to be true, and there is no opportunity to present evidence to the contrary. In other words, the Tenant

would not have an opportunity to dispute the validity of the Notice if an Application for Dispute Resolution was not filed within thirty days of receiving the Notice.

As the Tenant understood her obligation to dispute the Four Month Notice to End Tenancy within thirty days of receiving it and she did not dispute the Notice within thirty days of receiving it, I find that she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and that she no longer has the right to argue the validity of the Notice.

The Tenant did not, in my view, have the right to arbitrarily conclude that she did not have to file an Application for Dispute Resolution to dispute the Four Month Notice to End Tenancy because she did not believe that is was a valid Notice. Rather, I find that she should have filed the Application for Dispute Resolution and then argued at the hearing that the Notice was not valid.

As the Tenant did not dispute the Four Month Notice to End Tenancy within thirty days of receiving it and, pursuant to section 49(9) of the *Act*, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and was required to vacate the rental unit by the effective date of this Notice, I stand by my January 18, 2020 decision that the tenancy ended on July 31, 2019, on the basis of the Four Month Notice to End Tenancy that was served pursuant to section 49 of the *Act*.

As the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Four Month Notice to End Tenancy, she was not permitted to make submissions regarding the validity of the Notice at the hearing on March 30, 2020. The Tenant was not permitted to make submissions about whether or not the Landlord had proper grounds to end the tenancy, pursuant to section 49 of the *Act*; whether the Notice had been served in good faith; or whether the Notice was not valid because she had not been served with the third page of the Notice. These are all arguments that would have been presented at a hearing if the Tenant had filed an Application for Dispute Resolution to dispute the Notice.

In my interim decision of January 18, 2020, I concluded that the Tenant was not obligated to pay rent for July of 2019. This was based on my conclusion that the Tenant was entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement, pursuant to section 51(1) of the *Act,* because she was served with a notice to end a tenancy under section 49 of the *Act*. As the Tenant was

not obligated to pay rent for July of 2019, I dismiss the Landlord's application for unpaid rent for that month.

As the Tenant contends rent was paid for July of 2019, which the Landlord denies, I must attempt to interpret the Provincial Government reports submitted in evidence to determine whether rent was paid for that month. In interpreting these reports, I accept the Tenant's submission that the Government pays rent in advance, as this is consistent with my understanding of how shelter payments are made. In other words, I accept that a payment made in the latter part of June would constitute a rent payment for July.

In the Provincial Government report titled a "History Report", there is a June 20, 2019 note that indicates the Landlord advised that rent was not being charged for July and that the Landlord requested that no further rent be sent to her. The note indicates that the Worker has changed the Tenant's address to NFA; that the Worker has "end dated rent direct" and "end dated rental expenses". I interpret the entry to mean that the Worker, at the request of the Landlord, has stopped rent payments being sent to the Landlord. I find that this note corroborates the Landlord's submission that rent was not received for July of 2019.

Near the bottom of the "History Report" there is an entry that indicates that on May 27, 2019, $350.00 was paid to the Landlord, by way of cheque. This entry reflects the undisputed evidence that rent for June of 2019 was paid to the Landlord by the Provincial Government.

Near the bottom of the "History Report" there is an entry that indicates that on June 20, 2019 the Tenant was entitled to a rent benefit of $350.00, which I accept was rent for July. I specifically note that there is nothing beside the entry that shows the $350.00 was paid to the Landlord, by way of cheque. Had this payment been sent to the Landlord, I would expect that payment to be recorded in the same manner the May 27, 2019 payment was recorded. As this entry does not reflect that $350.00 was sent to the Landlord on June 20, 2019, I find the entry corroborates the Landlord's submission that rent was not paid to her for July of 2019.

The Provincial Government document titled a "Cheque History Query" appears to be a summary of benefits paid for the month of June of 2019. This document clearly indicates that rent was paid to the Landlord during this benefit period. It is not clear to me, however, whether this refers to the payment made to the Landlord on May 27, 2019 for June or whether it was a payment made to the Landlord in June for rent for July. As

it appears to be a summary of benefits the Tenant was entitled to in June of 2019, I find it most likely that it reflects the payment made on May 27, 2019. As this document is not entirely clear, I find that it has limited evidentiary value.

In considering the issue for rent for July of 2019, I was influenced by the electronic communication submitted in evidence by the Tenant, dated July 27, 2019. In this communication the Landlord declared that the Tenant "already got your free month rent". I find that this communication corroborates the Landlord's submission that rent for July was not received.

I find, on the balance of probabilities, that the Landlord did not receive rent for July of 2019.

In considering the issue of rent for July of 2019, I was influenced by the fact the Tenant is basing her submission that rent for July was paid by the Provincial Government on the same documents that I have been tasked with interpreting. While it is possible that I have incorrectly concluded that the documents corroborate the Landlord's testimony rent was not paid, it is equally possible that the Tenant has incorrectly concluded that the documents establish that rent was paid for July of 2019.

On the basis of the undisputed evidence that the Tenant did not vacate the rental unit on July 31, 2019, I find that she is obligated to pay "occupation rent" on a *per diem* basis until the landlord recovers possession of the premises.

On the basis of the undisputed evidence that the Tenant was still occupying the rental unit on the date of the hearing, and that she is obligated to pay rent, on a per diem basis, until March 30, 2020. I am unable to conclude that she is obligated to pay rent for any period after March 30, 2020, as I cannot conclude that she will continue to occupy the rental unit on, or after, March 31, 2020.

On the basis of the undisputed evidence, I find that the Tenant did not pay any rent for the period between August 01, 2019 and March 30, 2020. As such, I find that she must pay 7 months rent for the period between August 01, 2019 and February 29, 2020, in the amount of $2,450.00. I find that she also must pay per diem rent of $11.29 for the 30 days in October of 2020 which she has occupied the rental unit, which is $338.70.

In adjudicating this matter, I have placed no weight on the undisputed testimony that the Landlord contacted the Provincial Government to advise them that the tenancy was

ending, that the Tenant was not required to pay rent for July of 2019, and that no further rent payments were required. Although these actions likely prevented the Tenant from paying “overholding rent” to the Landlord in a timelier manner, it does not negate the Tenant’s obligation to pay the “overholding rent”.

In adjudicating this matter, I have placed no weight on the undisputed testimony that the Landlord has refused to inform the Provincial Government that their tenancy agreement continued after July 31, 2019. Although this likely prevented the Tenant from paying “overholding rent” to the Landlord, I find it was a reasonable decision considering the Landlord did not wish to reinstate the tenancy.

In my interim decision of January 18, 2020, I concluded that the Landlord did not reinstate the tenancy when she accepted rent for any period prior to July 31, 2019, and that matter will not be reconsidered here.

In my interim decision of January 18, 2020, I referred to Residential Tenancy Branch Policy Guideline 11, which reads, in part:

> A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.
>
> The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.
>
> If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:
>
> - whether the receipt shows the money was received for use and occupation only
> - whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
> - the conduct of the parties.
>
> There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to

> the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.

I find that the Landlord's failure to apply for an Order of Possession on the basis of the Four Month Notice to End Tenancy shortly July 31, 2019, does not establish that she waived the Four Month Notice to End Tenancy. For whatever reason, the Landlord served, and attempted to enforce, a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, rather than attempting to enforce the Four Month Notice to End Tenancy. That does not, in my view, establish that she waived the Four Month Notice to End Tenancy. Rather, it is indicative of a Landlord that is not entirely familiar with the *Act.*

I find that it is very clear, from the text message dated July 27, 2019, in which the Landlord declared that "you have till the 31 of July to be out and you better be", clearly informs the Tenant of the Landlord's intent to pursue the Four Month Notice to End Tenancy. On the basis of this email and the fact that the Landlord has never agreed that the tenancy would continue after July 31, 2019, I find it unreasonable to conclude that the Landlord, who is not a professional landlord, somehow abandoned the Four Month Notice to End Tenancy simply because she had not filed an application for an Order of Possession on that basis.

I find that by contacting the Provincial Government on June 20, 2019 to advise them the Tenant had "been evicted" and is entitled to free rent for July, the Landlord has clearly indicated that she is not waiving the Four Month Notice to End Tenancy and that she is not reinstating the tenancy.

I find that the Landlord refused to inform the Provincial Government that the tenancy agreement continued after July 31, 2019, at significant financial cost. I accept the Landlord's testimony that she did not do so because she did not want to reinstate the tenancy. I find that the Landlord's continued refusal to provide this information to the Government strongly supports a conclusion that she did not waive the Four Month Notice to End Tenancy and that she did not reinstate the tenancy.

Section 55(2)(b) of the Act allows a landlord to request an order of possession if a notice to end the tenancy has been given by the landlord, the tenant has not disputed

the notice by making an application for dispute resolution and the time for making that application has expired. As the Tenant did not dispute the Four Month Notice to End Tenancy and the time for making that application has expired, I grant the Landlord's application for an Order of Possession on the basis of the Four Month Notice to End Tenancy.

I find that the Landlord's Application for Dispute Resolution has merit and that she is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord is granted an Order of Possession on the basis of the Four Month Notice to End Tenancy, pursuant to section 55(2)(b) of the *Act*. The Order of Possession is effective on April 30, 2020, which is intended to provide the Tenant a reasonable opportunity to find alternate housing during the current health crisis. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

It is my understanding that due to the current health crisis in British Columbia, the Supreme Court of British Columba is not enforcing most Orders of Possession. This does not affect the validity of this Order of Possession. In the event the Tenant is able to safely move out of the rental unit during this health crisis by the effective date of this Order of Possession, the Tenant should do so. In the event the Tenant does not vacate the rental unit by the effective date of the Order of Possession, the Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court whenever that Court deems it appropriate.

The Tenant's application for to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is granted, for reasons explained in my interim decision of January 18, 2020.

The Landlord's application for a Order of Possession on the basis of a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed, for the reasons explained in my interim decision of January 18, 2020.

The Landlord has established a monetary claim, in the amount of $1,888.70, which includes $1,788.70 in rent and $100.00 in compensation for the fee paid to file this

Application for Dispute Resolution. This claim must be reduced by the $100.00 filing fee granted to the Tenant in my interim decision of July 18, 2020.

Based on these determinations I grant the Landlord a monetary Order for the balance of $1,788.70. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This interim decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 03, 2020

Residential Tenancy Branch