Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, PSF, RP

Introduction

The tenant seeks various relief under section 32, 46, 47, and 62 of the *Residential Tenancy Act* ("Act"). He filed applications for dispute resolution on September 28 and October 25, 2020, and a dispute resolution hearing was held on November 23, 2020.

The tenant, his girlfriend (who did not testify, but who provided background support), and the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure,* under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's application, I find that the claims for relief other than the applications to dispute the two notices to end tenancy are unrelated such that I dismiss them with leave to reapply. I explained to the tenant that given the limited time in which to conduct the hearing, that if these claims were not addressed during the hearing that he is at liberty to reapply to the Residential Tenancy Branch seeking relief under sections 32 and 62 of the Act.

Issues

1. Is the tenant entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice")?

2. Is the tenant entitled to an order cancelling a One Month Notice to End Tenancy for Cause (the "One Month Notice")?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on December 1, 2017. Monthly rent, which is due on the first of the month, is $418.00. There is a security deposit of $200.00. A copy of the written tenancy agreement was submitted into evidence.

On September 28, 2020, the landlord served a 10 Day Notice on the tenant by attaching it to the door of the rental unit. The 10 Day Notice, a copy of which was submitted into evidence, indicated – and the landlord testified and confirmed this – that the tenant owed $2,090.00 in unpaid rent. They testified that this amount included unpaid rent that was due September 1, 2020. However, they then explained that the amount was in error, and that it should be $1,672.00. As for the arrears, the landlord explained that the amount represented unpaid from a period of time of March 2018 until the month before the pandemic began. They submitted a spreadsheet which purportedly showed the amounts owing.

On October 16, 2020, the landlord served a One Month Notice on the tenant by attaching it to the door of the rental unit. The One Month Notice, a copy of which was tendered into evidence, indicated that the reason for it being issued was because the tenant had “significantly interfered with or unreasonably disturbed another occupant or the landlord.” With respect to this reason, the landlord testified that “to make a long story short,” the issue had to do with vents needing cleaned. The landlord gave the tenant notice (on October 3) that there would be cleaners coming to clean the vents. (In effect, giving notice to enter the rental unit.)

When the cleaners and the landlord showed up at the appointed time and day, the tenant allegedly did not let the landlord and the cleaners have access. However, the tenant did allow the cleaners to come into the rental unit. There was an issue with the tenant accessing the furnace, which is located outside the rental unit area and is not supposed to be accessed by the tenant. The landlord has since put a lock on the door, preventing the tenant from accessing the furnace.

In his testimony the tenant said that he tried paying the rent for September 2020 but that the landlord refused to accept the rent. In evidence is a copy of an Interac E-transfer statement dated October 16, 2020, in which the landlord states that they are unable to

accept the rent that was due September 1, 2020. Also, in evidence is a copy of a Facebook Messenger conversation between the parties on Tuesday, September 1, 2020. A portion of this conversation reads as follows:

> Tenant: Hey man.
> Just wanted to let you know that will be coming to you on Friday.
> [. . .]
>
> Landlord: [the landlord responds about unrelated matters]

On Friday, September 4, 2020, the following conversation occurs:

> Tenant: Hey man. So I was misinformed about payday. My payday is 2 weeks from today. I'm sorry for the inconvenience this may cause.
>
> Landlord: Ok.

Further, regarding the arrears, the tenant testified that on September 27 he received an email from the landlord saying that he owed "roughly" $2,000. Later that day he received another email saying that he owed $2,508.00. On September 28, he received an email saying that he owed $2,090.00. On November 5, he received an email from the landlord saying that arrears were $1,359.00. And then, today, he remarked that the amount is $1,672.00. "How am I supposed to know what I owe?" he added.

Both parties testified about a rent payment plan. However, given that the amounts owing are for a period of time before the provincial state of emergency and after September 1, 2020 (and therefore fall outside the requirement to have a rent repayment plan in place), I will not address this matter further.

The tenant testified that he thought the notice that the cleaners would be coming was *only* for the cleaners and was not so that the landlord could enter the rental unit. He testified that they entered the rental unit without knocking.

There was also some evidence purportedly written by the tenant's ex-girlfriend that the landlord submitted into evidence. However, given that the statement is uncorroborated and undisputed, and given that the author (that is the ex-girlfriend) did not attend the hearing to confirm the information this evidence will be given little weight.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy was based. I will address both notices below.

In respect of the One Month Notice, I am not persuaded that the tenant's one-time refusal to let the landlord *and* the cleaners into the rental unit constitutes "significantly interference" or an "unreasonably disturbance" to the landlord. It appeared that, ultimately, the cleaners were able to enter the property and clean the vents. Quite simply, I am not prepared to end this tenancy based on the tenant's unwillingness to allow entry on one occasion. And, while there are other reasons written on page 3 of the One Month Notice, only the unreasonable disturbance and significant interreference ground are indicated on page 2 of the One Month Notice. For these reasons I find that the landlord has not proven the ground on which this One Month Notice was issued. Accordingly, I cancel the One Month Notice and it is of no force or effect.

Regarding the 10 Day Notice, Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the 10 Day Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified that the tenant did not pay rent when it was due on September 1, 2020. While the tenant testified that he later tried to pay the rent but was rebuffed, it cannot be ignored that this attempt did not occur until well after the rent was due. Moreover, there is the rather unfavourable Facebook Messenger conversation in which the tenant himself admits to the landlord that rent, which was due on September 1, would not be paid until September 4. Then, on September 4, instead of paying the rent, the tenant tells the landlord that he will not be getting paid (and presumably would not be paying the rent) for a further two weeks. Thus, by the tenant's own admission in the documentary evidence provided (and submitted by the landlord), he failed to pay the rent that was owing on September 1, 2020.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the 10 Day Notice was issued, insofar as the rent for September 1, 2020 is concerned. Accordingly, the tenant's application for an order cancelling the 10 Day Notice is dismissed. The 10 Day Notice is valid, insofar as the tenant's failure to pay rent on September 1, 2020 is concerned.

Section 55(1) 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
>
> (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.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

> In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice, [. . .]
>
> (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act. Having dismissed the tenant's application, I grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision.

Conclusion

The tenant's application is granted as it relates to the One Month Notice to End Tenancy for Cause. However, the tenant's application is dismissed, without leave to reapply, as it relates to the 10 Day Notice to End Tenancy for Unpaid Rent.

I grant the landlord an order of possession, which must be served on the tenant and is effective seven (7) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is final and binding, and it is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 23, 2020

Residential Tenancy Branch