Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fort Pelly Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: OPC
For the Tenant: CNC-MT, CNR-MT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated August 21, 2020 ("One Month Notice");

The Tenant filed a claim:

- for more time to apply to cancel the One Month Notice;
- to cancel a One Month Notice;
- for more time to apply to cancel the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"); and
- for an Order to cancel the 10 Day Notice.

The Tenant, and an agent for the Landlord, R.A., (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. Two witnesses for the Landlord were also present, but they did not provide any testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy

Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The Landlord said that he served the Tenant with his application, notice of hearing, and documentary evidence by attaching it to the rental unit door on October 2, 2020. The Tenant said he did not receive this; however, in the hearing, the Tenant’s testimony indicated knowledge of the contents of the Landlord’s hearing and evidentiary package; therefore, I find that it is more likely than not that the Tenant received the Landlord’s application and documentary evidence, as set out by the Landlord.

The Tenant said that he served the Landlord with his Application and evidentiary package in person with police officers as witnesses. The Agent did not dispute this evidence. As such, I considered the Parties documentary evidence in my rendering my Decision.

The Agent said that the Tenant was not served with a 10 Day Notice, because his rent is always paid by the Ministry; the Tenant confirmed that his rent is always paid on time. As a result, I find that the Tenant’s application to cancel the 10 Day Notice is irrelevant and, therefore, I dismiss it without leave to reapply.

Preliminary and Procedural Matters

The Agent provided his email address in the Application, and the Tenant said the Decision should be mailed to him at the rental unit address. The Parties confirmed their understanding that the Decision would be sent to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or Confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2019, with a monthly rent of $450.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of $225.00, and no pet damage deposit.

The Landlord submitted a copy of the One Month Notice, which was signed and dated

August 21, 2020; he confirmed that the One Month Notice was served by being posted on the rental unit door on August 21, 2020, and that it has an effective vacancy date of September 30, 2020. The grounds for eviction checked on the One Month Notice are:

- The Tenant or a person permitted on the property by the Tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
- The Tenant or a person permitted on the property by the Tenant has:
  - engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - jeopardized a lawful right or interest of another occupant or the Landlord.

More Time to File an Application

Pursuant to section 90 of the Act, the Tenant was deemed served with the One Month Notice on August 24, 2020, three days after it was posted on the door. Pursuant to section 47 of the Act, a tenant who is served with a one month notice has ten days from the date of deemed service to apply for dispute resolution with the RTB. Accordingly, the Tenant had until September 4, 2020, to apply for dispute resolution. However, the evidence before me is that the Tenant applied to the RTB on September 28, 2020, over three weeks after the application deadline.

When I asked him the reason for his late application, the Tenant said:

> I needed to get more information; I didn't have a complete package. So they held it at the office. I needed identification and the police cards. I phoned the police then. I was trying to get the police reports from everything that happened. So I was trying to get that, but I wasn't able to do that fast enough. So anyway, I got the file numbers and the police cards.

The Tenant did not supply any police reports about incidents at the residential property.

Grounds for One Month Notice

The Agent submitted letters he received from other tenants and staff, which included the

following comments:

[D., a tenant] said:

> From day one this guy been on my case harassing me in the hallway the hotel, calling me pervert, fucking prick;
>
> This guy needs to be out of the building, he is a [threat] to everybody around him. This guy been [living] here for a most a year now. Since day one he has been a real asshole to everybody in the hotel.
>
> Please, I would like you to remove this guy right away. He's a real [threat] to everybody.

Staff member [unidentified] said:

> Saturday, October 3 @ 615 pm
>
> Witnessed [Tenant] come to lobby and berate and insult staff and hotel. Also took a swing at [D.], as I witnessed;
> Did my hotel check saw door wide open room total mess. Shut door
> . . .
> Called 911 [to report that Tenant] assaulted [D.] staff member, punched him in the ribs. Gave him verbal warning several times. [Tenant] made accusations of home invasion and being verbally abusive, insulting staff, acting in an irate manner.

Staff member [D.T.] dated October 9, 2020

> I work at the [residential property]. I am submitting a letter indicating the abuse, threats I have received from [the Tenant].
>
> [The Tenant] has walked up to the desk and told me everyone living in this building are sex offenders. He added that every woman comes to the [residential property] is sexually assaulted. [The Tenant] asked me to kick all those involved out of the building. I told [the Tenant] he needs to speak to management.
> **. . .**

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

More Time to File an Application

Section 66 of the Act allows the Director to extend a time limit established by the Act only in exceptional circumstances. Policy Guideline #36 ("PG #36") provides guidance on what is meant by "exceptional circumstances" in this regard.

PG #36 states:

> **Exceptional Circumstances**
>
> The word 'exceptional' means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word 'exceptional' implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a 'reason' without any force of persuasion is merely an excuse. Thus, the party putting forward said 'reason' must have some persuasive evidence to support the truthfulness of what is said.
>
> Some examples of what might **not** be considered 'exceptional' circumstances include:
>
> - the party who applied late for arbitration was not feeling well
> - the party did not know the applicable law or procedure
> - the party was not paying attention to the correct procedure
> - the party changed his or her mind about filing an application for arbitration
> - the party relied on incorrect information from a friend or relative
>
> Following is an example of <u>what could be considered 'exceptional'</u> circumstances, depending on the facts presented at the hearing:
>
> - the party was in the hospital at all material times.
>
> The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.
>
> The criteria which would be considered by an arbitrator in determining whether or not there were exceptional circumstances include:
>
> - the party did not wilfully fail to comply with the relevant time limit

- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances.

The Tenant's reason for not applying to cancel the One Month Notice on time is that he believed he had to have all of his evidence ready to submit at the time that he applied to the RTB. However, according to section 59 of the Act:

> **Starting proceedings**
>
> **59** (2) An application for dispute resolution must
>
> (a) be in the applicable approved form,
>
> (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
>
> (c) be accompanied by the fee prescribed in the regulations.
>
> (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.
>
> **. . .**

Rule 3.14 states:

> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
>
> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17. .
>
> [emphasis added]

As a result, I find that the Tenant did not have to wait until he had all the evidence he needed before he could apply to cancel the One Month Notice. Pursuant to Rule 3.14, the Tenant's evidence had to be received by the Landlord and the RTB not less than 14 days before the hearing. I, therefore, find that the Tenant's reason for being late filing for dispute resolution is not supported by the Act or the RTB Rules of Procedure. I find that the Tenant did not have exceptional circumstances or reasons for not applying for dispute resolution on time, pursuant to the Act and the Rules.

In addition, the top portion and the third page of the One Month Notice give clear instructions on how to dispute it. If the Tenant failed to seek help in applying for dispute resolution before the time period set out in the One Month Notice had passed, I find that this delay was caused or contributed to by the Tenant's own conduct.

I am not satisfied that the Tenant has shown that exceptional circumstances prevented him from filing the application on time and that the time for filing the Application should be extended. Therefore, I do not grant the Tenant an extension to the application filing deadline.

Section 47 of the Act addresses landlords' evictions for cause. It states:

> **47** (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
>
> (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
>
> (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
>
> (b) must vacate the rental unit by that date.
>
> [emphasis added]

Given that the Tenant did not apply to cancel the One Month Notice within the required time frame, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice. I, therefore, dismiss the Tenant's Application without leave to reapply.

Grounds for One Month Notice

I must now consider if the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. Under section 55, when a tenant's application is dismissed, and I

am satisfied that the One Month Notice complies with the requirements of section 52 of the Act, I must grant the landlord an Order of Possession.

Section 52 requires that any notice to end tenancy must be signed, dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. I find that the One Month Notice issued by the Landlord meets the requirements of section 52 and that the Landlord is entitled to an Order of Possession. As the effective date has already passed, I find the Order of Possession will be effective **two days after being served** on the Tenant.

Conclusion

The Tenant is unsuccessful in his application to extend the time in which to apply to cancel the One Month Notice; therefore, his application is dismissed wholly without leave to reapply. The Landlord's application is successful, as the Agent provided sufficient evidence to support the validity of the One Month Notice.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession, to serve and enforce upon the Tenant, and which is effective **two days after deemed service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia, and it may be enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, 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 07, 2020

Residential Tenancy Branch