Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC; CNC; FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72(1).

The tenant attended the hearing with her advocate and a support person. The tenant, her advocate, and support person dialed into the conference number seven (7) minutes into the hearing. The landlord was represented at the hearing by the Director and the Building Manager. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form. The tenant provided oral testimony that she sent the Notice of Dispute to the landlord via registered mail but did not have the Canada Post tracking number. The landlord confirmed receipt of the Notice of Dispute and provided the tenant's tracking number. The tracking number is recorded on the cover sheet of the decision.

The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. The tenant's advocate also asked the tenant if she received the landlord's evidence and the tenant reiterated, she had received the landlord's evidence. I find that all parties have been served with the required documents in accordance with the *Act*.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) rule 6.11. The parties were also advised that if any recording was made without the director's authorization and used for any purpose, the recording party will be referred to the RTB Compliance Enforcement Unit for the purposes of investigation under the *Act.*

At the outset, I advised the tenant and landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in the hearing.

Issues

Is the tenant entitled to:

- An order for the landlord to comply with the *Act* pursuant to s. 62(3);
- Cancellation of the 1 Month Notice for Cause issued pursuant to s. 47 of the *Act;*
- Recovery of the filing fee pursuant to s. 72(1).

Background and Evidence

I have considered the documentary evidence and the testimony of the tenant and the landlord. Not all details of their submissions and arguments are reproduced here. The relevant and important aspects of their respective claims and my findings are set out below.

The Notice was submitted into evidence, signed on July 26, 2021, and is on the prescribed form #RTB-33 provided by the Residential Tenancy Branch. The Notice sets out that the tenancy was to end because:

- The tenant allowed an unreasonable number of occupants in the unit/site/property/park;
- The tenant or a person permitted on the property by the tenant:
    - 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
    - Put the landlord's property at significant risk
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In particular, the Notice describes the following:

> Tenant has allowed or caused to allow, for an unreasonable number of disruptive individuals/visitors on to the premises. Disturbances by these individuals have occurred throughout the day and ae especially upsetting to other tenants when they occur late at night between the hours of 11:01 p.m. to 7:00 a.m. Their actions have impacted and negatively affected the Quiet Enjoyment of other tenants and posed a risk to the property and its contents. Tenant has utilized the rental unit beyond its intended use as a private residence by conducting business or trade from the unit, which is an additional breach of a material term of the tenancy agreement. The Site Manager and Property Portfolio Manager have discussed and/or corresponded with the tenant regarding these issues and no long- term compliance or consistent resolution has been achieved with the Tenant.

The tenant acknowledged having several visitors during a stressful time in her life. She stated she was diagnosed with a number of serious medical conditions and the purposes of the visits were to help with mobility issues and other daily living requirements/needs, for example cooking. Different visitors helped with different things. She openly acknowledged that one visitor was a problem and she asked him not to visit or enter the building.

The tenant stated that she is nocturnal (a "night owl") – she is up at night and sleeps during the day. She confirmed that late at night, she had visitors and the visitors would use the side door as access and egress so not to disturb other tenants. She felt that the side door was less

disruptive to the other tenants rather than having visitors come and go through the front door entrance. She also stated her visitors used the side door to exit for a smoke. The tenant also acknowledged that from time to time during her 10 -year tenancy, the landlord spoke to her about issues that arose. She could not recall if she received any written warnings.

The tenant states she is actively involved in the arts community and many of her visitors are from this sector. She also volunteers in her community and tries to help out those who are in need and less fortunate.

The tenant also alleges that one of the tenants in the building is "out to get her" and she has experienced "discrimination and harassment" from this individual.

Neither the landlord nor the tenant provided witnesses for cross examination to support their claims. The tenant provided no medical evidence for review.

Analysis

Before an application can be considered on its merits, it must be determined if the Notice meets the requirements under the *Act* and if the tenant's dispute application has been filed within the prescribed legislative time frames.

Pursuant to s. 47(d)(i) of the Act, a landlord may end a tenancy if the tenant or a person permitted to be on the residential property by the tenant significantly interferes with or unreasonably disturbs another occupant or the landlord of the residential property.

Upon review of the Notice to End Tenancy, I find the Notice complies with the formal requirements set out in s. 52 of the Act, viz., it is signed and dated by the landlord, gives the address of the rental unit, states the correct effective date, states the grounds for the notice, and is on the approved form. I conclude that the Notice is valid, complying with the requirements of the *Act.*

Residential Tenancy Policy Guideline #12. "Service Provisions" lays out the ways in which documents pertaining to a tenancy or a dispute resolution proceeding are required or permitted to be given or served on a party. The Guideline states documents served by mail or posted are "deemed" served within certain time frames. Deeming provisions under the *Act* are rebuttable. Consideration must be given to any evidence that indicates the evidence was received earlier or later. If the evidence was received earlier, this earlier date will supersede the "deeming" date. For example, a Notice posted to the door, is deemed received three (3) days after date of posting whereas a Notice sent by mail is deemed received five (5) days after the date mailed (unless the contrary can be shown).

In this case, the landlord served the Notice by posting it on the door and by Registered Mail. The landlord testified the Notice was posted on the tenant's door, July 28, 2021. In keeping with Guideline #12, the Notice may be deemed received on or before July 31, 2021. When questioned, the tenant could not remember the specific date she received the Notice. By her own admission, she was in and out of her residence on a daily basis so would have "received" the posted Notice between July 28 and July 31.

The landlord also sent the Notice by Canada Post Registered Mail. In this case, the Canada Post Tracking information provides evidence that the Notice was delivered to the tenant's address on July 29, 2021. Further, on July 29,2021 an application for Dispute Resolution was initiated on behalf of the tenant at the Residential Tenancy Branch.

As stated above, the deeming provision is rebuttable based on available evidence. Based on the date the application to dispute the Notice was initiated (July 29, 2021) in concert with the Canada Post tracking information, I conclude the tenant had the Notice in her possession on or before 1:36 p.m. on July 29, 2021.

When a tenant receives a One-Month Notice issued under s. 47, she must, within 10-days, dispute the notice with the Residential Tenancy Branch. At the top of the Notice the tenant is alerted to filing requirements:

> You have the right to dispute this Notice **within 10 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 limit, 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.

This notification is based in law, specifically, s. 47(4):

(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.*
[emphasis added]

The Residential Tenancy Dispute Management "History" tab provides the following chronology:

- July 29, 2021 (1:36 pm) _ ……application in progress…. saved not submitted
- August 15, 2021……application received & payment required
- August 15, 2021……payment received

[emphasis added]

Although an application was started, the application was not submitted.

Residential Tenancy Branch Rules of Procedure specifically **Rule 2- Making a Claim** sets out the Dispute Resolution Application requirements detailing when an application is considered "made".

Rule 2.1 "Starting an Application for Dispute Resolution" states, *"To make a claim, a person must complete and submit an Application for Dispute Resolution".* [emphasis added]

and

Rule 2.6 "Point at which an application is considered to have been made" reads *"The application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the*

Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application."

An application is "made" only "*when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted".* It is not sufficient for an application to be "in progress", 'saved, but not submitted'. Although the tenant's application was initiated on July 29, 2021, it was not completed, submitted, with the fee paid until August 15, 2021. The application was filed outside the prescribed 10-day time frame.

Section 47(5) states:

(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 until by that date".*

Based on the foregoing, the tenant is conclusively presumed to have accepted that the tenancy ended on August 31,2021 and must vacate the rental unit.

In view of the above, I dismiss the tenant's application in its entirety, without leave to reapply. As the tenant's application was not successful, the tenant is not entitled to recover the $100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

Section 55 Order of possession for the landlord gives the director authority to grant an order of possession before or after the date when a tenant is required to vacate a rental unit.

Section 55(3) states, *"The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order."*

Pursuant to s. 55 of the *Act*, the landlord is granted an order of possession effective January 31, 2022, at 1:00 p.m. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: December 22, 2021

Residential Tenancy Branch