Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, LRE, PSF, FFT
OPR-DR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant (the Tenant's Application) filed by the Tenant R.T. under the *Residential Tenancy Act* (the *Act*) on April 11, 2022, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlord to comply with the *Act*, regulation, and/or tenancy agreement;
- Compensation for monetary loss or other money owed;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law; and
- Recovery of the filing fee.

This hearing dealt with an Application for Dispute Resolution by Direct Request filed by the Landlord (the Landlord's Application) under the *Act* on April 14, 2022, seeking:

- An Order of Possession because they issued a 10 Day Notice and rent was not paid in the required time.

As the Tenant had already filed their Application seeking to dispute the 10 Day Notice, the Landlord's Application seeking enforcement of the 10 Day Notice naming both Tenants as Respondents was crossed with the Tenant's Application naming only the Tenant R.T. as the Applicant and the Landlord as the Respondent, as the matters were set to be heard together at a participatory hearing.

The hearing was convened by telephone conference call on June 16, 2022, at 11:30 A.M. (Pacific Time), and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) from the Tenant R.T. and raised no concerns with regards to the service method or date but argued that the Tenant filed the dispute of the 10 Day Notice late. I have dealt with this matter in the decision. Although the Landlord insisted that they served the Tenants with their NODRP, the Tenants denied receipt and the Landlord could not provide me with consistent and reliable details regarding service. The Landlord appeared confused, first referencing documents relating to a civil proceeding with a different party, and then service of the 10 Day Notice, rather than service of the NODRP. Finally, the Landlord stated that they would have served the NODRP the same day they got it from the Residential Tenancy Branch (the Branch) or the following day, but could not tell me what date that was. The Tenants again denied receipt.

Based on the Tenants' denial of service, the Landlord's confusion regarding service of their NODRP on the Tenants, and the lack of documentary evidence before me from the Landlord corroborating service, I therefore find that the Landlord has failed to satisfy me on a balance of probabilities that the NODRP was served on the Tenants as required by the *Act*, the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), and the principles of administrative justice and procedural fairness. I therefore dismiss the Landlord's Application with leave to reapply. This is not an extension of any statutory time period. However, as the Landlord acknowledged receipt of the Tenant's NODRP, and raised no concerns with regards to the date or method of service, I therefore proceeded with the hearing of the Tenant's Application as schedule. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the Landlord's Application seeking enforcement of the 10 Day Notice was dismissed with leave to reapply, I still assessed whether the Landlord was entitled to either an Order of Possession or a recovery of unpaid rent as part of the Tenant's Application, pursuant to sections 55(1) and 55(1.1) of the *Act*.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the

proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses listed in the Application and confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

An addendum to one of the several tenancy agreements in the documentary evidence before me, dated November 21, 2016, states that it is a lease with the option to purchase. It states that the current sale price is $575,000.00, that the Tenants would take over a first mortgage on the property in the amount of approximately $360,000.00 - $370,000.00, that the Landlord would carry the second mortgage in the amount of approximately $200,000.00 - $215,000.00, and that the parties are each to obtain professional appraisals and then settle on a price.

As a result, I was concerned that the “Tenants” might have an ownership interest in the property and that I may not have jurisdiction to hear and decide this matter. However, the parties confirmed at the hearing that the property had not be sold in whole or in part to the Tenants, and that no mortgage(s) or portion(s) thereof on the rental unit had been taken over by the Tenants. The Tenant states that in 2017 they attempted to take over the mortgage, at which point they realized that there was a judgement against the property, and therefore they did not proceed with taking over the mortgage. As the parties agreed that there was only a residential tenancy agreement under in place, and that the Tenants held no ownership interest in the property, I found that a tenancy to which the Act applies exists between them.

However, in ascertaining this information it came to my attention by way of the Tenants, that there is an ongoing civil proceeding in the B.C. Supreme Court between the Landlord and a third party with regards to the property. The Tenants stated that although they are not named in the proceeding as either plaintiffs or defendants, they

provided affirmed testimony for consideration in the proceeding, which had court dates on February 28, 2022, and April 4, 2022. The Tenants stated that the decision is anticipated to come out at the end of July 2022. The Landlord disagreed with this information, stating that no trial dates have or will be set as the claims against them have been withdrawn.

Despite the Landlord's affirmed testimony that proceedings against them were withdrawn, the Tenants submitted an affidavit for the B.C. Supreme Court proceeding naming a corporation as the plaintiff and the Landlord, as well as another person with the initials M.H., as the defendants. This affidavit contains a stamp and signature indicating that it was sworn before a commissioner for taking affidavits on March 30, 2022. As a result, and as there is no evidence before me other than the Landlord's affirmed testimony that the proceedings against them with regards to the property rented to the Tenants' under the tenancy agreement has been withdrawn, I find that I must determine if section 58(2)(d) of the *Act* applies. Section 58(2)(d) of the *Act* states that the director must not determine a dispute if the dispute is linked substantially to a matter that is before the Supreme Court.

At the hearing the parties stated that the civil proceeding in the B.C. Supreme Court is not substantially linked to the tenancy and that they wished to proceed with the hearing. I am therefore satisfied on a balance of probabilities that section 58(2)(d) of the Act does not apply and I therefore accepted jurisdiction and proceeded with the hearing as scheduled.

Preliminary Matter #2

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the remaining claims for:

- An order for the Landlord to comply with the *Act*, regulation, and/or tenancy agreement;
- Compensation for monetary loss or other money owed; and
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;

are not sufficiently related to the matter of rent or the 10 Day Notice, I exercise my discretion to dismiss these claims with leave to reapply. This is not an extension of any statutory time limit.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the 10 Day Notice and recovery of the filing fee by the Tenant R.T.

Issue(s) to be Decided

Are the Tenant's entitled to cancellation of the 10 Day Notice?

If not, is the Landlord entitled to an Order of Possession and/or the recovery of unpaid rent pursuant to section 55 of the *Act*?

Is the Tenant R.T. entitled to recovery of the $100.00 filing fee?

Background and Evidence

The parties were agreed that the property contains three separate suites, the main unit, and two other suites. However, they disagreed about what exactly was rented to the Tenants, with the Landlord stating that they rented only a portion of the property to the Tenants and remained living in a suite, and the Tenants stating that they rented the entire property but the Landlord never left one of the suites as required. Although copies of two separate tenancy agreements were submitted for my review and consideration, the parties could only agree that the first one entered into on November 21, 2016, (the First Agreement) was correct. The First Agreement, signed on November 26, 2021, states that the 3-year fixed-term tenancy which commenced on January 1, 2017, was set to end on December 31, 2019, that rent in the amount of $2,650.00 was due each month, although a due date was not given, and that a security deposit in the amount of $1,325.00 was required. It also states that it is a lease with the option to purchase. The parties agreed that the addendum noted in the preliminary matters section of this decision relates to this tenancy agreement and that rent was due on the first day of each month.

The Landlord argued that the second tenancy agreement before me with a start date of January 1, 2020, (the Second Agreement) is fraudulent, as it does not contain their signature. The Tenants disagreed. The Second Agreement, which appears to only have

been signed by the Tenants on October 18, 2019, states that the 5-year fixed-term tenancy commenced on January 1, 2020, and is set to end on December 31, 2024. It states that rent in the amount of $2,500.00 is due on the first day of each month, and that a security deposit in the amount of $1,325.00 is required. Under additional information in section 3 of the Second Agreement it states “R + V $1300/ shop & suite C $1200. Suite B for (Landlord’s name). The Tenants argued that this is the current tenancy agreement in affect, as they pay $2,500.00 per month as evidenced by the rent receipts before me. The Landlord disagreed, stating that the First Agreement is the only valid agreement, as they did not sign the Second Agreement. However, the Landlord did agree that the Tenants have only been paying $2,500.00 in rent per month, and stated that this is because they were granted a rent reduction. The Tenants disagreed with this characterization but agreed that they have been paying only $2,500.00 per month in rent for several years.

Although the parties agreed that a third 97-month fixed-term tenancy agreement exists, a copy of which was not before me and was reportedly submitted by the Landlord as part of the aforementioned civil proceedings, all parties agreed that it was fraudulent. However, they disagreed about who drafted the fraudulent tenancy agreement with the Landlord arguing that it was the Tenants and the Tenants arguing that it was the Landlord.

The parties agreed that the Tenants were permitted to deduct $180.00 from rent for emergency repairs, but disagreed about whether the Tenants were entitled to deduct a further $129.00 at a later date for this same purpose when the issue persisted. The parties agreed that the 10 Day Notice was personally served on the Tenant on April 5, 2022. The 10 Day Notice in the documentary evidence before me is on a 2012 version of the form, is signed and dated April 5, 2020, has an effective date of April 15, 2020, and states that $2,800.00 in rent was due as of April 1, 2020.

Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(4) of the *Act* also states that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

Section 46(5) of the *Act* states that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 to which the notice relates by that date.

The parties agreed that the 10 Day Notice was personally served on the Tenant on April 5, 2022, and Branch records show that the Tenant filed the Application seeking cancellation of the 10 Day Notice on April 11, 2022. Pursuant to section 25.5(2) of the *Interpretation Act*, and the definition of "Days" in the Rules of Procedure, I therefore find that the Application was filed within the period prescribed in section 46(4) of the *Act*, as the office was closed on the 5th day following personal service of the 10 Day Notice on the Tenant and the Tenant was therefore permitted to file the Application in compliance with section 46(4) of the *Act* on the 6th day, which was April 11, 2022. As a result, I find that section 46(5) of the *Act* does not apply.

Section 46(2) of the *Act* states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. Section 52(e) of the *Act* sates that in order to be effective, a notice to end a tenancy must be in the approved form when given by a landlord. The most recent 10 Day Notice to End Tenancy for Unpaid Rent or Utilities form (the #RTB-30), was published on March 3, 2021, and contains updates from the previous versions of the form, including but not limited to information regarding special rules for rent arrears incurred between March 18, 2020 to August 17, 2020. The form used by the Landlord is from August of 2012, and therefore significantly outdated. It is only two pages in length instead of 3 and does not contain the above noted information regarding special rules for rent arrears, information regarding the collection and use of personal information on the form under the *freedom of information and Protection of Privacy Act*, or information regarding the conclusive presumption provision under section 46(5) of the *Act*. As a result, I find that it is not in the approved form. Further to this, I note that the 10 Day Notice was served on April 5, 2022, but refers to rent due from April of 2020, 2 years prior to the date the parties agree the 10 Day Notice was served.

Based on the above, I therefore grant the Tenant's Application seeking cancellation of the 10 Day Notice, and I order that the tenancy continue in full force and effect until it ended in accordance with the *Act*.

The Tenant is also entitled to recovery of the $100.00 filing fee, which I order them to deduct from the next months rent.

Although the Landlord's Application was previously dismissed in this decision with leave to reapply due to lack of service, as I have already found above that the 10 Day Notice upon which the Landlord's Application was based is not valid, the Landlord is therefore not permitted to reapply for enforcement of that same 10 Day Notice.

Conclusion

I grant the Tenant's Application seeking cancellation of the 10 Day Notice, and I order that tenancy continue in full force and effect until it ended in accordance with the *Act*.

Pursuant to sections 72(1) and 72(2)(a) of the *Act*, the Tenants are therefore permitted to retain $100.00 from the next month's rent payable under the tenancy agreement for recovery of the filing fee.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: July 25, 2022

Residential Tenancy Branch