Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: CNR-MT, CNC-MT
Landlords: FFL, OPC

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid rent pursuant to section 46;
- more time to dispute the 10 Day Notice pursuant to section 66
- cancellation of a One Month Notice to End Tenancy for Cause dated May 31, 2022 (the "One Month Notice") pursuant to section 47; and
- more time to dispute the One Month Notice pursuant to section 66.

This hearing also dealt with the Landlords' cross-application under the Act for:

- an Order of Possession under the One Month Notice, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

The Landlords attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenants did not attend this hearing. I left the teleconference hearing connection unlocked until 9:40 am in order to enable the Tenants to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlords and I were the only ones who had called into the hearing.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlords confirmed that the notice of dispute resolution proceeding packages and the Landlords' documentary evidence (collectively, the "NDRP Packages") were sent to the Tenants by registered mail on August 13, 2022. The Landlords submitted Canada Post registered mail receipts with two tracking numbers in support. Those tracking numbers are referenced in the cover page of this decision. Based on the foregoing, I find the Landlords have served the Tenants with the NDRP Packages in accordance with section 89(2)(b) of the Act. I find that pursuant to section 90(a) of the Act, the Tenants are deemed to have received the NDRP Package on August 18, 2022.

The Landlords testified that the tracking information for the NDRP Packages shows that the Tenants did not pick up the packages from Canada Post. The Landlords testified that the Tenants have been ignoring the Landlords' communications, including reminders for this hearing.

Residential Tenancy Policy Guideline 12. Service Provisions states:

> Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I accept the Landlords' testimony that the Tenants have been ignoring the Landlords' communications. I am therefore satisfied that the Tenants' refusal to pick up the NDRP Packages does not override the deeming provision in section 90 of the Act. I find the Tenants are deemed to have received the NDRP Packages sent by the Landlords via registered mail as stated above.

The Landlords testified that they did not receive any documents from the Tenants. I find the Tenants did not serve the Landlords with the Tenants' notice of dispute resolution proceeding package or any documentary evidence in accordance with the Act.

Preliminary Matter – Amendment of Parties

The Tenants' application listed DL and another individual AF as applicants. The Landlords' application listed DL and KL as Tenants. Based on the Landlords' testimony and the tenancy agreement which is signed by DL and KL as Tenants, I find the Tenants are DL and KL. I have amended the style of cause accordingly.

Preliminary Matter – Tenants' Non-Attendance

Rule 7.3 of the Rules of Procedure provides as follows:

> **7.3 Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

The Landlords testified that they did not issue a 10 Day Notice to End Tenancy for Unpaid Rent to the Tenants. The Tenants' application also did not include a copy of such a notice. As the Tenants did not attend this hearing to make submissions or present evidence on this issue and did not serve any materials on the Landlords in accordance with the Act, I dismiss the Tenants' claims to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and to seek more time to dispute such notice, without leave to re-apply.

The Landlords confirmed they issued the One Month Notice and wished to proceed with their cross-application. The Landlords explained that they were uncertain whether the Tenants have left the rental unit. Having found the Tenants to be deemed served with the Landlords' cross-application, I directed the hearing to continue in the absence of the Tenants.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to recovery of the filing fee?

Background and Evidence

This tenancy commenced on January 1, 2021 for a fixed term of 1 year, then continued thereafter on a month-to-month basis. Rent was $1,900.00 per month, due on the first day of each month. The Tenants paid a security deposit of $950.00 which is held by the Landlords in trust.

The Landlords testified they served the Tenants with the One Month Notice on May 31, 2022 in person, via email, and by leaving a copy in the Tenants' mailbox. The Landlords submitted a signed Proof of Service document in support.

A copy of the One Month Notice has been submitted into evidence. The One Month Notice is dated May 31, 2022 and has an effective date of June 30, 2022.

The One Month Notice gives the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The One Month Notice provides additional details of cause including complaints from the strata council and property management company, an authorized pet dog, guest parking violations, garbage and visible drug paraphernalia left in common areas, noise, smoking, and bylaw infractions.

The Landlords testified that the Tenants have had a history of non-compliance with strata bylaws, and that the Landlords have received complaints from the strata council and their former neighbours.

The Landlords testified they tried to do an inspection of the rental unit in July 2022 and found the locks to be changed.

Analysis

1. Are the Landlords entitled to an Order of Possession?

Based on Landlords' evidence and the Tenants' application which acknowledges that the One Month Notice was delivered on May 31, 2022, I find the Tenants were served with the One Month Notice in accordance with section 88 of the Act on May 31, 2022.

Section 47(4) of the Act states that 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.

In this case, I find the deadline for the Tenants to dispute the One Month Notice was June 10, 2022, or 10 days after May 31, 2022, the date the Tenants received the One Month Notice.

Records from the Residential Tenancy Branch indicate that the Tenants applied to dispute the One Month Notice on June 30, 2022. The Tenants also sought more time to dispute the One Month Notice.

Based on the above, I find the Tenants did not apply to dispute the One Month Notice within the 10-day period under section 47(4).

Sections 66(1) and (3) of the Act state as follows:

> **Director's orders: changing time limits**
> 66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].
> […]
> (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline 36. Extending a Time Period 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 what could be considered "exceptional" 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 making a determination as to 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

Since the Tenants did not attend this hearing any did not provide any substantive evidence, I am unable to conclude on a balance of probabilities that there were "exceptional circumstances" to warrant an extension of time under section 66(1). Accordingly, I decline to extend the time limit for the Tenants to dispute the One Month Notice.

Section 47(5) of the Act states that 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.

Having declined to extend the time limit for the Tenants to dispute the One Month Notice and having found that the Tenants did not made an application for dispute resolution by June 10, 2022, the deadline required under section 47(4), I find the Tenants are conclusively presumed to have accepted that the tenancy ended on June 30, 2022, the effective date of the One Month Notice.

In reaching this conclusion, I am mindful of the decision in *M.B.B. v. Affordable Housing Charitable Association*, 2018 BCSC 2418, in which the Supreme Court of British Columbia held that if a tenant fails to attend a hearing on an application to cancel a notice of eviction, an arbitrator cannot dismiss the tenant's application without considering whether the statutory grounds for the eviction have been met (see paras. 26 and 27).

However, I find the present situation is different from the above case because the tenant in *M.B.B.* had applied to dispute the notice of eviction within the statutory time limit. In this case, the Tenants have not applied to dispute the One Month Notice within the time limit under section 47(4) and are conclusively presumed to have accepted the One Month Notice under section 47(5).

Accordingly, I dismiss the Tenants' application to dispute the One Month Notice on the basis of conclusive presumption under section 47(5).

Sections 55(1), 55(2)(b), and 55(4) of the Act state:

> **Order of possession for the landlord**
> 55(1) 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.
>
> […]
> (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
>
> […]
>
> (b) 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;
>
> […]
> (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],
>
> (a) grant an order of possession, and
>
> (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Section 52 of the Act states:

> **Form and content of notice to end tenancy**
> 52 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,
>
> (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
>
> (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
>
> (e) when given by a landlord, be in the approved form.

I have reviewed a copy of the One Month Notice and find that it complies with the requirements of section 52 in form and content. As noted above, the Tenants' application to dispute the One Month Notice is dismissed on the basis of conclusive presumption.

Accordingly, I find that the Landlords are entitled to an Order of Possession under section 55(1) of the Act.

Since the Landlords have made a cross-application, I find that the Landlords are also entitled to an Order of Possession under sections 55(2)(b) and 55(4) of the Act.

The effective date of the One Month Notice has already passed. As such, I grant the Landlords an Order of Possession effective two (2) days after service upon the Tenants.

2. Are the Landlords entitled to recover the filing fee?

The Landlords have been successful in their cross-application. I grant the Landlords' claim for recovery of the $100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlords are authorized to deduct $100.00 from the $950.00 security deposit held by the Landlords in full satisfaction of the amount awarded in this application.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective two (2) days after service upon the Tenants. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords are authorized to deduct $100.00 from the Tenant's security deposit on account of the filing fee awarded in this application.

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: September 07, 2022

Residential Tenancy Branch