

DECISION

Dispute Codes MT, CNC, AAT, RR

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's three representatives at this hearing gave sworn testimony that they handed the 1 Month Notice to the tenant on June 6, 2011. The tenant confirmed receiving the 1 Month Notice from the landlord's representatives on that date. Landlord XY confirmed the tenant's testimony that she handed him a copy of her dispute resolution hearing application on July 13, 2011. The tenant also confirmed that she received the landlord's evidence package in advance of the hearing. I am satisfied that these documents were served to one another in accordance with the *Act*.

At the hearing, Landlord XY made an oral request for an immediate Order of Possession if the tenant's application to cancel the landlord's 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the tenant be granted an extension of time to file her application for dispute resolution to cancel the 1 Month Notice? If the tenant's application for an extension of time to file her application were allowed, should her application to cancel the 1 Month Notice be allowed. Should the landlord be granted an Order of Possession if the tenant's application for an extension of time to file her application for cancellation of the 1 Month Notice or her application to cancel the 1 Month Notice were dismissed? Should an order be issued to the landlord to allow the tenant and/or her guests access to the rental unit? Should the tenant be allowed to reduce her rent for repairs, services or facilities agreed upon but not provided by the landlord?

Background and Evidence

This month-to-month tenancy commenced on August 1, 2009. Monthly rent is set at \$425.00, payable in advance on the first of the month. The landlord continues to hold the tenant's \$200.00 security deposit paid on or about August 1, 2009.

The landlord entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by July 31, 2011, the landlord cited the following reasons for the issuance of the Notice:

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 landlord also entered into written evidence many letters or memos from other occupants of the tenant's building, a neighbouring resident and employees of the landlord outlining concerns about the tenant's behaviours and the circumstances surrounding her tenancy.

Background and Evidence – Tenant's Application for an Extension of Time to File her Application to Cancel the 1 Month Notice

Prior to the hearing, the landlord submitted written evidence objecting to the tenant's request for an extension of time to file her application for dispute resolution to cancel the 1 Month Notice. Landlord XY gave oral testimony at the hearing reiterating this objection.

Once I was satisfied that the relevant documents had been served to one another, I asked the tenant to explain why she needed more time to file her application for dispute resolution to seek a cancellation of the 1 Month Notice.

The tenant responded that she could not file her application for dispute resolution within the 10-day time period outlined on the 1 Month Notice because she was out of town due to medical issues. As she had provided no written evidence to support her application for dispute resolution and nothing about these medical issues, I asked her to provide additional details regarding the dates when she was out of town and the circumstances that prevented her from filing her application on time. She testified that she left her community four or five days after she received the 1 Month Notice. She said that she was out of town for three full days and returned home on the fourth day. She explained that she has severe diabetes, Hepatitis C, asthma and a range of other medical problems. She offered no other specifics as to why her absence from her rental unit for

a three or four day period, in which she apparently returned still within the 10-day time period for filing an application for dispute resolution, warranted an extension of time to file her application for dispute resolution.

Analysis – Tenant's Application for an Extension of Time to File her Application to Cancel the 1 Month Notice

I find that the tenant has not provided sufficient information to enable her to obtain an extension of time to file her application for dispute resolution regarding the landlord's 1 Month Notice. Other than her descriptions of a range of ongoing medical conditions she has, the tenant provided little detail to explain why a three or four day absence from her community prevented her from complying with the clear 10 day time limit for filing an application for dispute resolution to seek a cancellation of the 1 Month Notice. She provided no written evidence to support her request for an extension of time to file her application. I also note that she did not file an application for dispute resolution until July 6, 2011, a full month after she received the 1 Month Notice.

As the tenant has not provided an adequate explanation for her delay in filing her application for dispute, I deny her application for an extension of time to apply to cancel the 1 Month Notice.

Landlord's Oral Request for an Order of Possession

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Since I have dismissed the tenant's application for an extension of time, I find that the tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 31, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be

served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Remainder of Tenant's Application

Since this tenancy has ended and I have issued an Order of Possession, I dismiss the remainder of the tenant's application as issues of ongoing access to the rental unit and requests to reduce rent have become moot and do not need to be considered.

Conclusion

I deny the tenant's application for an extension of time to apply for dispute resolution to cancel the landlord's 1 Month Notice.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. As I find that this tenancy has ended, I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the remainder of the tenant's application without leave to reapply.

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*.