



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MT, DRI, OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord requesting an Order of Possession based on a One-Month Notice to End Tenancy for Cause dated January 23, 2012 and effective February 29, 2012.

The hearing was also convened to deal with a cross application by the tenant, filed on February 9, 2012 in which the applicant was requesting more time to file to dispute a One-Month Notice to End Tenancy for Cause that was personally served on the tenant on January 23, 2012. Further, the tenant was seeking an order to force the landlord to complete repairs. In addition the tenant was disputing an additional rent increase.

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The remaining issues to be determined, based on the testimony and the evidence are:

- Whether the tenant is to be granted more time to file to dispute a Notice to End Tenancy for Cause.
- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause should be cancelled.
- Whether the landlord's increase of rent exceeds that allowed under the Regulation.
- Whether the landlord should be ordered to complete repairs

Preliminary Issues

Request to Extend Time Limit to Dispute the Notice

Section 47 (1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or if the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or

another occupant ; or put the landlord's property at significant risk; or if the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Once the One-Month Notice has been issued, section 47(4) of the Act provides that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

I find that the tenant is required to be aware of the above time limit to file and in fact, page two of the One Month Notice to End Tenancy for Cause, that was received by the tenant, contained information regarding this, under the heading “*INFORMATION FOR TENANTS WHO RECEIVE THIS NOTICE TO END TENANCY*”, stating the following:

“You have the right to dispute this notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.....If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice”

In this instance I find that the ten-day period would have expired on or before February 3, 2012. I find that the tenant made application to dispute the notice on February 9, 2012, which was more than ten days after receiving the notice.

Section 66 (1) gives a dispute resolution officer the authority to extend some time limits established by the Act in exceptional circumstances. But the Act specifically states in section 66(3) that the dispute resolution has no authority to extend the time limit to make an application to dispute a One-Month Notice to End Tenancy beyond the effective date of the Notice, which in this case was February 29, 2012.

The tenant has asked that the time limit be extended, based on the tenant’s exceptional circumstances. I find that the tenant’s application and request was submitted prior to the effective date of the Notice and therefore the issue of exceptional circumstances and the possibility of extending the deadline can validly be considered.

However, I find that the tenant’s explanation about the reasons for delaying the application to dispute the Notice would need to fit the criteria of an exceptional circumstance before the time limit to dispute the Notice could be extended.

The tenant testified that he did not apply to dispute the One-Month Notice to End Tenancy for Cause within the 10-day deadline due to being distraught over the unexpected death of his favourite cousin, which occurred on January 18, 2012. I find that the tenant’s verbal testimony about these exceptional circumstances was not

supported with any medical documentation to verify his inability to function sufficiently to make an application to dispute the One-Month Notice to End Tenancy for Cause. The tenant also failed to submit a copy of the obituary or some other confirmation of the alleged death in the family.

Given the above, I find that the tenant's request to be allowed to dispute the merits of this One-Month Notice to End Tenancy for Cause must be denied as the tenant did not sufficiently meet the burden of proof to support his claims.

I find that the tenant's application was made beyond the time limit permitted by the Act and this deadline cannot be extended. Therefore the merits of the One-Month Notice cannot be disputed.

Based on the above, I find that the Notice cannot be cancelled and I find that the landlord is therefore entitled to an Order of Possession.

Additional Rent Increase

With respect to the alleged additional rent increase, the tenant testified that the landlord had increased the rent from \$1,100.00 per month to \$1,145.00 per month, effective January 1, 2012.

Section 43 (1) of the Act states that a landlord may impose a rent increase only up to the amount, (a) calculated in accordance with the regulations; (b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing.

Section 43(2) states that a tenant may not make an application for dispute resolution to dispute a rent increase calculated in compliance with the Regulations.

With respect to the issue of whether this landlord had calculated the rent increase in compliance with the Act and Regulation, I find that for 2012, the allowable percentage is 4.3%. In this case the maximum increase to rent of \$1,100.00 would be \$47.30 which would be allowable rent of \$1,147.30 per month. Given the above, I find that the increase of the rent to \$1,145.00 falls within the allowable limit above and therefore the tenant is not entitled to dispute the rent increase at a dispute resolution proceeding. Accordingly, this portion of the tenant's application is dismissed.

Repairs

The remaining issue to be determined is the tenant's request for an order to force the landlord to complete repairs to the unit. Given that the tenancy is ending, I find that this portion of the tenant's application is moot.

Conclusion

Based on the above, I find that the Notice cannot be cancelled and I hereby issue an Order of Possession in favour of the landlord effective February 29, 2012. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The remainder of the tenant's application is dismissed without leave.

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: February 27, 2012.

Residential Tenancy Branch