



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNQ, MT, O

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy; for more time to apply to set aside a Notice to End Tenancy; and for "other".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

This hearing commenced at the scheduled start time of 10:30 a.m. however the Agent for the Landlord did not dial into the teleconference until 10:47 a.m. All issues discussed during the first 17 minutes of the hearing were reviewed with the Agent for the Landlord and he was given the opportunity to address each issue.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, served pursuant to section 49.1 of the *Residential Tenancy Act (Act)*, be set aside and should the Tenant be granted more time to apply to set aside this Notice to End Tenancy?

Background and Evidence

The Landlord and the Tenant agree that the Landlord and the two parties appearing at the hearing on behalf of the Tenant entered into a written tenancy agreement for this rental unit, effective October 01, 2012.

The Landlord and the Tenant agree that on May 10, 2013 the female Tenant signed a Request for Addition or Deletion of Tenants and/or Occupants, which requests that the male Tenant be removed from the tenancy agreement. The parties agree that the male Tenant has vacated the rental unit.

The Landlord and the Tenant agree that a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, served pursuant to section 49.1 of the *Act*, was personally served to the Tenant on September 06, 2013. This Notice declared that the rental unit must be vacated by November 30, 2013.

The Tenant applied to cancel this Notice to End Tenancy on December 09, 2013. The Tenant stated that she did not dispute the Notice to End Tenancy before December 09, 2013 because her partner was in treatment and she did not know what to do, and because she has a medical disability.

The Landlord and the Tenant agree that on September 13, 2013 the parties entered into a mutual agreement to end the tenancy on December 31, 2013. The Tenant stated that she felt pressured into signing this agreement because she did not have anywhere to move. The Agent for the Landlord stated that he told the Tenant that she could stay until December 31, 2013, but only if she signed a mutual agreement to end the tenancy.

The Landlord and the Tenant agree that on September 13, 2013 the Tenant signed a letter in which she agreed that she would not allow her partner to attend the rental unit during the last few months of the tenancy. The Tenant stated that she felt pressured into signing this letter because the Agent for the Landlord told her that if she did not sign this letter he would not allow her to remain in the rental unit until December 31, 2013.

Analysis

On the basis of the undisputed evidence, I find that a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, served pursuant to section 49.1 of the *Act*, was personally served to the Tenant on September 06, 2013.

Section 49.1(5) of the *Act* stipulates that a Tenant has 15 days from the date of receiving the Notice to End Tenancy to dispute a Notice that is served pursuant to section 49.1 of the *Act*. Section 49.1(6) of the *Act* stipulates that a Tenant who does not dispute the Notice to End Tenancy within 15 days of receiving it is conclusively presumed to have accepted that the tenancy is ending on the effective date of the Notice. As the Tenant did not dispute the Notice to End Tenancy until December 09,

2013, I find that she is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, which was November 30, 2013. On this basis, I must dismiss the Tenant's application to set aside this Notice.

Section 66(1) of the *Act* authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy in exceptional circumstances. Section 66(3) of the *Act* stipulates that I must not extend the time limit for disputing a Notice to End Tenancy beyond the effective date of the Notice. As the effective date of this Notice to End Tenancy is November 30, 2013, I find that I am unable to extend the time limit to December 09, 2013, regardless of the reasons the Tenant did not dispute the Notice on time. I therefore dismiss the Tenant's application for more time to apply to set aside this Notice to End Tenancy.

I find that the mutual agreement to end the tenancy that was signed by the parties is largely irrelevant. While it may have been relevant if the Landlord was attempting to regain possession of the rental unit prior to the effective date of the mutual agreement to end the tenancy, which was December 31, 2013, that date has now passed and the mutual agreement to end the tenancy is irrelevant.

I find the Tenant's argument that she was pressured into signing the mutual agreement is also irrelevant, given that the mutual agreement is not relevant. I note that even if the Tenant was pressured into signing the mutual agreement, the agreement directly benefits the Tenant. The mutual agreement allowed her to remain in possession of the rental unit for one additional month past the effective date of the Notice to End Tenancy that was served to her on September 06, 2013. Had the parties not signed the mutual agreement to end the tenancy, the Tenant would have been required to vacate the rental unit by November 30, 2013.

I find that the letter, dated September 13, 2013, in which the Tenant agreed that she would not allow her partner to attend the rental unit during the last few months of the tenancy is entirely irrelevant to the matters in dispute at this hearing. The Tenant has not applied to amend the terms of the letter nor has the Landlord applied to enforce the terms of the letter.

Conclusion

As I have dismissed the Tenant's application to cancel a notice to end tenancy, I grant the Landlord an Order of Possession, as requested at the hearing, pursuant to section 55(1) of the *Act*.

The Agent for the Landlord stated that the Landlord is willing to allow the Tenant to remain in the rental unit until February 28, 2014, to provide her with the opportunity to find alternate housing. The Order of Possession will therefore require the Tenant to vacate the rental unit by 1:00 p.m. on February 28, 2014.

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: January 30, 2014

Residential Tenancy Branch

Residential Tenancy Branch

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*

- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca