



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wal-den Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and an agent for the landlord.

During the hearing the landlord requested an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a notice to end tenancy and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 66 of the *Residential Tenancy Act (Act)*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1).

Background and Evidence

The parties agree the tenancy began in July 2014 as a 1 year fixed term tenancy for a monthly rent of \$790.00 due on the 1st of each month with a security deposit of \$395.00 paid.

The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on December 10, 2014 with an effective vacancy date of January 31, 2015 citing the tenant has allowed an unreasonable number of occupants in the unit/site; the 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; put the landlord's property at significant risk; and the tenant has engaged in illegal activity that has, or is

likely to damage the landlord's property; adversely affect the quiet enjoyment, security; safety or physical well-being of another occupant or the landlord.

The tenant testified that he received the 1 Month Notice and that he filed his Application for Dispute Resolution to dispute the Notice on December 24, 2014.

The tenant explained that he had not submitted his Application for Dispute Resolution within the required 10 days as outlined on the Notice to End Tenancy because he was trying to meet with the landlord to discuss the notice but that the landlord declined to meet with him or discuss the notice.

Analysis

Section 66 of the *Act* states the director may extend a time limit established under the Act only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

While I accept the tenant may have been attempting to discuss the Notice with the landlord I find that the tenant has not presented any exceptional circumstances that prevented him from submitting his Application for Dispute Resolution within 10 days of receiving the Notice.

As such, I dismiss the portion of the tenant's Application seeking more time to apply to cancel a notice to end tenancy.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property, or
 - ii. 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.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

As I have dismissed the tenant's Application seeking an extension of time to apply to cancel a notice to end tenancy I find the tenant failed to file his Application for Dispute Resolution within 10 days of receiving the 1 Month Notice to End Tenancy for Cause issued on December 10, 2014. As such, I find the tenant, pursuant to Section 47(5) is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld and the landlord request one an order of possession must be granted to the landlord.

As the landlord verbally requested an order of possession during the hearing I find the landlord is entitled to such an order pursuant to Section 55(1).

Conclusion

I grant the landlord an order of possession effective **January 31, 2015 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 20, 2015

Residential Tenancy Branch

