



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peninsula Bulldozing Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order granting more time to make an application to cancel a notice to end tenancy, and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the tenant confirmed receiving the landlord's evidence and that her evidence consisted of a copy of the Notice.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order granting more time to make an application to cancel a notice to end tenancy?

If so, is the tenant entitled to an order cancelling the Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the landlord showed that this tenancy began on September 1, 2006, monthly rent at the beginning of the tenancy was \$1500,

and a security deposit of \$750 was paid to the landlord. The tenant listed on the written tenancy agreement was PP, who this tenant stated was her common law husband and that she lived with PP until he vacated, sometime in 2012, remaining there and paying the monthly rent. The landlord submitted that PP moved out of the rental unit in August 2014.

I also heard undisputed evidence that the monthly rent had increased to \$1800 during the course of the tenancy, and that sometime in 2014, after PP moved out, the landlord began collecting \$1000 from the occupants residing in the lower suite, and \$800 from this tenant. The landlord explained that they allowed the tenant to rent the lower suite and to collect rent from them, but when the tenant began falling behind on rent payments, the landlord began collecting a portion, or \$1000, from the lower occupants and the balance of \$800 from the tenant for the upper suite.

The landlord submitted that the tenant was served the Notice by personal delivery on January 6, 2015, listing an effective move-out date of February 6, 2015.

A 1 Month Notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. In this case, as the Notice was served on January 6, 2015, the earliest the Notice could take effect is February 28, 2015; therefore, the Notice effective date is changed to February 28, 2015.

The Notice informed the tenant that she had 10 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice, or in this case, February 28, 2015.

The causes listed on the Notice alleged that the tenant is repeatedly late in paying rent, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and has caused extraordinary damage to the rental unit.

In response to my question, the tenant confirmed receiving the Notice on January 6, 2015, by personal delivery, and not filing an application to dispute the Notice until January 29, 2015.

In support of her request for an order granting more time to make an application to cancel the Notice, the tenant submitted that she had written a letter to the landlord on January 12, 2015, asking for another chance to correct her past mistakes and did not

hear from him in a timely manner and that she had enrolled in school and an employment program.

The landlord also submitted that the tenant had made at least 4 late payments of her rent in the last 6 months and had not paid February's rent at all.

The tenant confirmed this evidence.

During the hearing, the landlord requested an order of possession for the rental unit, effective immediately.

Analysis

In the case before me, I find that a tenancy was formed between the landlord and this tenant when the original tenant, PP, vacated the premises, as the tenant continued to reside in the rental unit and to pay rent.

Also, in the case before me, I find the evidence shows that the tenant received the landlord's 1 Month Notice on January 6, 2015, as confirmed by the tenant, and she was therefore required to file her application in dispute of the Notice by January 16, 2015; instead the tenant's application was made on January 29, 2015.

In considering the tenant's request to grant additional time to dispute the landlord's Notice, section 66(1) of the *Act* provides that an extension of time can only be granted where the applicant, the tenant in this case, has established that there are exceptional circumstances.

Residential Tenancy Branch Policy Guideline #36 offers examples of exceptional circumstances, such as if the party was in the hospital at all times. The tenant offered no proof that this or other exceptional circumstances existed.

Instances where a party did not understand the legislation or believed the landlord should respond to her letter prior to filing are not exceptional circumstances.

I therefore find that the tenant has failed to prove that exceptional circumstances prevented her from filing an application within 10 days of having been served with the Notice, and I therefore dismiss her application for an extension of time.

As a result, due to the tenant's failure to make a timely application as required by the Act, I dismiss the tenant's application to cancel the 1 Month Notice dated and issued January 6, 2015, as she is conclusively presumed to have accepted that the tenancy ends on February 28, 2015, the corrected effective date of the Notice, pursuant to section 47(5) of the Act.

As the landlord has made a verbal request for the order of possession for the rental unit at the hearing, I therefore grant such order to the landlord, pursuant to section 55(1) of

the Act. Although the landlord requested an immediate order of possession, I am unable to grant the order for an effective date earlier than February 28, 2015, the corrected effective date of the Notice.

The order of possession for the rental unit is effective at 1:00 p.m. on February 28, 2015, the corrected effective date of the Notice.

This final, legally binding order of possession is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement. The tenant is advised that costs of enforcement are subject to recovery from the tenant.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord is granted an order of possession for the rental unit effective February 28, 2015, at 1:00 p.m.

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 13, 2015

Residential Tenancy Branch

