



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

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 to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 1 Month Notice was personally served to the tenant on February 14, 2015 shortly after she had served the tenant personally with a 10 Day Notice to End Tenancy. I accept that the tenant was duly served with the 1 Month Notice, in accordance with section 88 of the *Act*. The tenant gave sworn testimony that he personally served the landlord with the Application for Dispute Resolution hearing package on February 26, 2015. I accept that the landlord was duly served with the tenant's Application for Dispute Resolution hearing package.

The tenant testified that he submitted his application after the deadline to file a dispute for a 1 Month Notice and that, as part of his application, he sought more time to file that application. He described a series of issues with providing the proper documentation for his all parts of his applications. He stated that he attended the Residential Tenancy Branch on more than one occasion, often at a time when the office was scheduled to close. The issues raised by the tenant in meeting his deadlines are issues that many tenants and landlords may face in submitting an application.

Part 5 of the *Residential Tenancy Act* provides detailed information with respect to starting a dispute resolution hearing, including the timelines under the *Act*. I note that those timelines are also available in Residential Tenancy Guides available to the public as well as on all notices to end tenancy prepared by the Residential Tenancy Branch. Residential Tenancy Policy Guideline No. 36 specifically addresses circumstances

under which the timelines might be extended. That guideline indicates that it would be very exceptional circumstances where a timeline would be extended. Under that guideline is a sample list of reasons that would not justify extending a timeline and would not be considered exceptional circumstances. They include but are not limited to;

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative.

Based on requirements under the legislation and the information available to the tenant to assist in this type of matter, I find that the tenant has not made his application within the timelines required under the *Act*. I further find that the tenant has not shown exceptional circumstances that warrant extending the timeline for his application. The landlord requested an Order of Possession under section 55(1) if the tenant was not successful in his application.

Issues to be Decided: Is the landlord entitled to an Order of Possession?

Background and Evidence

Both parties testified that this tenancy began in 2013. The original landlord passed away and the tenant continued to reside in the rental unit. He testified that he often paid his \$335.00 rental amount after it was due on the first of each month. He testified that he thought he and the landlord had an understanding regarding his late payment of rent. The tenant did not provide a security deposit as part of this tenancy.

The landlord testified that the tenant has been late in paying rent numerous times. Specifically, the tenant was late paying rent in November, 2014 as well as in February 2015. The landlord testified that she would regularly issue a 10 Day Notice for unpaid rent and, within the allowable time-frame, the tenant would pay his rent. She testified that the tenant paid rent for February 2015 on the 5th but that he has now, as of the date of this hearing, paid no rent for March 2015. The tenant did not dispute this evidence. He did provide some explanation as to why his rent has been late on a consistent basis.

Analysis

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 31, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Order of possession for the landlord

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.

In this case, the landlord has shown that the 1 Month Notice was issued for valid reason. The tenant has failed to provide information to dispute and has failed to apply in time to do so. Based on the evidence at this hearing and subject to section 55, I must grant an order for possession of the rental unit.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to 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.

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: March 27, 2015

Residential Tenancy Branch