



Dispute Resolution Services

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; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

The landlord did not attend this hearing, although I waited until 1115 in order to enable the landlord to connect with this teleconference hearing scheduled for 1100. The tenant attended the hearing and was given a full opportunity to be heard.

The tenant testified that she personally served the landlord with the dispute resolution package on 21 April 2015 at the rental unit. On the basis of the tenant's uncontested sworn testimony, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Is the tenant permitted more time to apply to cancel the 1 Month Notice? Should the landlord's 1 Month Notice be cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant testified she received the 1 Month Notice one or two days before the end of March. The 1 Month Notice is dated 30 March 2015 and sets out an effective date of 30 April 2015. The tenant denies that there is any basis for this notice.

The tenant testified that on 7 April 2015 she attempted to file an online application to dispute the 1 Month Notice. The tenant testified that she had a difficult time with the online application form and was unable to complete the application. The tenant testified that on 8 April 2015 she attended at a community service organization to get assistance filing the application. The tenant worked with a representative of the community service organization to file her application online. The tenant believed that her application was filed.

On 9 April 2015, the tenant telephoned the Residential Tenancy Branch and spoke to an Information Officer. The tenant provided me with the name of the Information Officer. The tenant sought to confirm that her application was filed. The Information Officer informed the tenant that her online application was not completed as applications involving fee waivers cannot be processed in this manner. The Information Officer arranged for the tenant to attend at a Service BC office to file her claim. The Information Officer assisted the tenant to find public transportation to this office.

The tenant testified that she is disabled and cares for her disabled granddaughter. The tenant testified that it is difficult for her to access various services because of the location of the rental unit.

The tenant testified that she had spoken to the landlord. The tenant testified that the landlord had indicated that he was willing to treat the 1 Month Notice as a warning and stated there was no need to appear at today's hearing.

Analysis

On the basis of the date of the 1 Month Notice and the tenant's admission, I find that the tenant received the 1 Month Notice on 30 March 2015. In accordance with subsection 47(5) of the Act the tenant had ten days from receipt of this notice to file an application to cancel it, that is 9 April 2015. The tenant's application was filed 20 April 2015.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the time required is strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

I find that the tenant made good-faith efforts to file her application within the statutory timeframe for disputing a 1 Month Notice. The tenant recognized her own difficulty with the online application and enlisted support. The tenant followed up on her application with the Residential Tenancy Branch to ensure that it was filed. I find that the tenant’s disability combined with her difficulty with the online application created the exceptional circumstances that resulted in the late filing of the tenant’s application. I allow the tenant’s application for more time to file her application to dispute the 1 Month Notice. On this basis, the presumption in subsection 47(6) does not apply.

Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not submit any evidence or appear for this hearing. The landlord did not meet his onus of proof. Thus, the 1 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

Conclusion

The tenant’s application is granted. The 1 Month Notice is set aside and is of no force or effect. The tenancy continues uninterrupted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 03, 2015

Residential Tenancy Branch