



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes MT CNQ RP PSF

Preliminary Issues

Section 49.1(5) of the *Act* stipulates, in part, that a tenant may dispute a 2 Month Notice by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in **exceptional circumstance**. The extension cannot be granted for a date after the effective date of the Notice. [My emphasis added by bolding].

Section 90(c) of the *Act* provides that a document given or served by attaching a copy of the document to a door or other place, is deemed to be considered received on the 3rd day after it was attached.

The Tenant testified that she could not recall the exact date that she received the 2 Month Notice. She thought the Notice had been placed inside her mailbox but she could not say for certain.

The Landlord testified that the 2 Month Notice was stuck into the doorjamb of the Tenant's rental unit entrance door on June 1, 2015.

After consideration of the foregoing, I found the Tenant was deemed to have received the 2 Month Notice on June 4, 2015, three days after it was posted, pursuant to section 90(c) of the *Act*. Therefore, I concluded the Tenant filed her June 19, 2015 application within the required 15 day period and the application for more time was not required. Neither party disputed the aforementioned conclusion. The hearing proceeded and each party was given a full and fair opportunity to be heard.

Introduction

This matter originally convened on August 18, 2015 in relation to the Tenant's application which was filed on June 19, 2015. The Tenant sought to obtain the following orders: allow the Tenant more time to file her application to dispute a notice to end

tenancy; to cancel a 2 month Notice to end tenancy because the tenant does not qualify for subsidy (2 Month Notice); to have the Landlord make emergency repairs for health or safety reasons; and to make repairs to the unit, site or property.

In her August 18, 2015 Decision, in absence of the Tenant, the Arbitrator dismissed the Tenant's application in its entirety without leave to reapply. The Landlord had attended the August 18, 2015 hearing and made an oral request for an Order of Possession. The Arbitrator granted the Landlord's request and issued them an Order of Possession effective September 1, 2015.

The Tenant filed an application for Review Consideration on August 24, 2015. The Review Consideration was granted and in the Decision of August 24, 2015 the Arbitrator ordered a New Hearing. The August 18, 2015 Decision and Order of Possession were suspended pending the outcome of this New Hearing granted upon review.

This November 2, 2015 Review Hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's legal counsel (Counsel). The Landlord and Tenant gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Counsel confirmed service of the documents sent by her office. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

Issue(s) to be Decided

1. Have the parties agreed to settle these matters?
2. If so on what grounds was the settlement reached?

Background and Evidence

The Tenant has occupied this subsidized 2 bedroom rental unit after signing the initial tenancy agreement that began on December 1, 1986. The written tenancy agreement listed the Tenant and a six year old child as occupants of the rental unit.

The parties entered into a subsequent tenancy agreement on April 13, 2006 for the same subsidized rental unit. This new tenancy agreement listed only one occupant, the Tenant.

During the course of this proceeding the parties agreed to settle these matters.

Analysis

Section 82(3) of the *Act* stipulates that following the review, the director may confirm, vary or set aside the original decision or order.

Section 79(7) of the *Act* stipulates that a party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

This New Review Hearing was granted based on the Tenant's application for Review Consideration. Therefore, the Tenant may not file another application for Review Consideration regarding these matters, pursuant to section 79(7) of the *Act*.

As indicated above, pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute, pursuant to section 63 of the *Act*. Therefore, I order the August 18, 2015 Decision and Order be **set aside**, pursuant to section 82(3) of the *Act*.

During the November 3, 2015 hearing the parties agreed to settle these matters on the following terms:

- 1) The Tenant agreed to withdraw her application for Dispute Resolution;
- 2) The Landlord agreed to withdraw the 2 Month Notice issued June 1, 2015;
- 3) The Landlord agreed to assist the Tenant and her advocate or legal counsel in securing a different (or new to the Tenant) subsidized rental unit for the Tenant to occupy as soon as possible;
- 4) The Tenant agreed to move into a different or new rental unit as long as the new tenancy agreement and rental unit met the following conditions:
 - a. the different or new unit is geographically located in the city of **Langford**;
 - b. the new written tenancy agreement must accommodate the Tenant's First Nation Culture by allowing for the Tenant to have guests (family members) who may stay overnight and at times stay for periods of up to seven days at a time;
- 5) The Tenant agreed that she would not refuse any reasonable offers that met the above conditions;
- 6) The Tenant acknowledged that she was aware that if she turns down more than 2 offers from **BC Housing** that she will be removed from their list of tenants to house;
- 7) The Tenant agreed that if she refused all reasonable offers that she would be evicted once the Landlord served her with the enclosed Order of Possession;
- 8) Each person agreed that the terms of this settlement agreement were reached by their own free will and that each person had a clear understanding of the terms that were agreed to, as listed above.

Conclusion

The August 18, 2015 Decision and Order were **set aside**, pursuant to section 82(3) of the *Act*.

The parties agreed to settle these matters, pursuant to section 63 of the *Act*. In support of the settlement agreement, the Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**.

In the event that the Tenant does not comply with the terms of this settlement agreement, then the enclosed Order of Possession will be in full force and effect upon service to the Tenant. If the Tenant complies with the terms of this settlement agreement, enters into a tenancy agreement and moves into a different rental unit, the Order of Possession will be void and of no force or effect.

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: November 02, 2015

Residential Tenancy Branch

