



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WHEELER CHEAM REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MT

Introduction

This hearing dealt with a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) and more time to make the application. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter – extension of time

The subject Notice to End Tenancy was issued pursuant to section 49 of the Act. Section 49(8) provides that a tenant may dispute the Notice by filing an Application for Dispute Resolution within 15 days of receiving the Notice. The tenant submitted that she received the Notice on November 25, 2015 and the application before me was filed on December 24, 2015, or 29 days after it was received.

Section 66(1) provides that "the director may extend a time limit established by this Act only in exceptional circumstances". The tenant applied for an extension of time to file this application. The tenant did not indicate the reasons for seeking an extension on her application and did not provide documentary evidence with respect to seeking an extension and the tenant was given the opportunity to provide the reason(s) for seeking an extension orally.

The tenant stated that she had filed a previous application but that she did not pick up the hearing documents and serve them upon the landlord within the time limit for doing so and then cancelled that application. A search of the Residential Tenancy Branch records showed that the tenant had previously filed on December 11, 2015, did not pick up the hearing documents prepared by the Branch and serve them upon the landlord by the required date December 17, 2015 and then the tenant cancelled the application on December 24, 2015.

As to the reasons she failed to pick up the hearing documents for the previous application and made a subsequent application on December 24, 2015 the tenant submitted multiple reasons, including: the tenant is unfamiliar with the dispute resolution process; that she had to consult with an Advocate and search city records for permits. that her husband refused to drive her to the Service BC office because of marital problems that are having; that she had been sick on

and off with the flu; that the winter months are not good for her; and, she has had significant health problems in the past.

The Act does not define “exceptional circumstances” and I have applied the ordinary meaning of “exceptional” which includes events that are unusual or rare. I found the reasons given by the tenant were not unusual or rare and her claims of illness were not supported by corroborating evidence that would demonstrate she was incapable of filing an application, or having an agent file an application on her behalf, within the time limit for doing so by exercising due diligence. Therefore, I declined to grant the tenant’s request for an extension.

Since the tenant’s application was filed outside the statutory time limit for disputing a 2 Month Notice to End Tenancy, I declined to consider her request to have it cancelled and I dismissed the tenant’s application.

The remainder of the proceeding dealt with the landlord’s entitlement to an Order of Possession and the effective date for the Order as provided under section 55 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and if so, when should it be effective?

Background and Evidence

The 2 Month Notice to End Tenancy served by the landlord was received by the tenant on November 25, 2015 and has a stated effective date of January 31, 2016. The Notice is in the approved form, provides the rental unit address, the reason for ending the tenancy, the date of issuance and the landlord’s signature.

It was also undisputed that the landlord has not received any rent for the month of January 2016 or February 2016.

The landlord requested an Order of Possession effective February 16, 2016. The landlord submitted that the concrete slab of the main floor of the rental unit is scheduled for “slab-jacking” on February 22, 2016 by a specialist company that is coming from another province to deal with the defect under this unit and other units in the townhouse complex and the landlord must ensure the unit is vacant before then.

The tenant requested the tenants be permitted occupancy until February 21, 2016 given the tenants’ lack of income or resources; the tenants’ health issues; and, in recognition that they have resided in the rental unit 12 years.

The landlord was not agreeable to the tenant’s request as the tenants have an unusually large volume of personal possessions in the rental unit and very little progress, if any, has been made to remove those possessions since the Notice was issued. The landlord also expressed

concern that the tenant has yet to request funds from the Ministry. Accordingly, the landlord has reservations that the tenants will return vacant possession by the date the tenant proposed and to protect the landlord's interests needs to allow time to bring in the bailiff if necessary. The landlord had provided photographs of the inside of the rental unit for my consideration.

Analysis

Having dismissed the tenant's application, the issue for me to determine is whether the landlord is entitled to an Order of Possession under the Act. Section 55 of the Act provides circumstances where a landlord will be provided an Order of Possession. Section 55(1) provides as follows:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
 - (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Notice provided as evidence by the tenant I find that it meets the form and content requirements of section 52 of the Act. Accordingly, I find that part (a) of section 55(1) has been satisfied.

For the reasons provided in the "Preliminary Matter" section of this decision I have dismissed the tenant's application to cancel the Notice. Accordingly, I find that part (b) of section 55(1) has been satisfied.

In light of the above, I find the landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act. The only remaining issue is the effective date of the Order.

Undeniably, the effective date of the Notice, January 31, 2016, has since passed. As such, and pursuant to the authority afforded me under section 55(3) of the Act, it is before me to determine the date the Order of Possession shall be effective. The parties proposed two dates for my consideration. While I am empathetic to the tenant's personal circumstances I have also considered that the tenants have had notice of the need to vacate the rental unit so as to repair the concrete slab of the rental unit, and other units, for approximately 2.5 months as of the date of this hearing. Upon review of the photographs of the rental unit and upon hearing from both parties, I also share the landlord's reservations that the tenants will return vacant possession by February 21, 2016 as promised given their apparent lack of progress to remove possessions thus far. I find the landlord's need to have vacant possession of this unit before the slab-jacking

is scheduled to take place at the property is a significant factor and I am satisfied that failure to prepare the unit for the slab-jacking as scheduled would have significant repercussions for the landlord. Therefore, I grant the landlord's request for an Order of Possession effective February 16, 2016 so that there is an allowance of time in the event the bailiff is required to return vacant possession of the unit to the landlord.

Since this tenancy has ended for landlord's use of property, the tenants are entitled to compensation equivalent to one month of rent under section 51 of the Act. Since the landlord did not receive rent for January 2016 I find the landlord's obligation to compensate the tenants has been satisfied. The landlord; however, remains at liberty to pursue the tenants for compensation for over-holding with respect to days of occupancy in the month of February 2016 if the landlord so chooses.

Conclusion

The tenants' application to cancel the Notice to End Tenancy has been dismissed. The landlord has been provided an Order of Possession effective February 16, 2016 to serve and enforce upon the tenants.

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 12, 2016

Residential Tenancy Branch

