



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC (Landlord's Claim)
 MT, CNC, MNDC (Tenant's Claim)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed March 15, 2016, she sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on February 29, 2016 (the "Notice").

The Tenant applied for Dispute Resolution on March 30, 2016. In her application she notes she received the Notice on February 29, 2016. On her application she indicates she seeks more time pursuant to section 66(1) of the *Residential Tenancy Act* (the "Act") to make her application to dispute the Notice: an Order cancelling the Notice; as well as, \$2,000.00 in monetary compensation from the Landlord pursuant to section 67 of the *Act*.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant testified that she received the Notice on February 29, 2016 by personal service.

The Landlord issued the Notice pursuant to section 47 of the *Act*. Section 47(4) and (5) provide as follows:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

The Tenant applied for dispute resolution on March 30, 2016 which is well outside the time to apply as provided above.

During the hearing the Tenant stated that she “needed more time to apply as she fell into a deep depression after an assault”. The Tenant testified that she was assaulted by her ex-fiancé on February 28, 2016. She then said that she had a hard time functioning because of depression. When I asked her if she had any supporting proof or documentation, such as a letter from her doctor, she stated she did not.

The Tenant then stated that she also did not understand the rules and how to proceed with her application and sought assistance from a family member.

The Tenant confirmed she received both pages of the Notice. On the first page of the Notice, the Tenant is clearly informed she must respond to the Notice as follows:

TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE

The second page of the Notice provides the following additional information:

INFORMATION FOR TENANTS WHO RECEIVE THIS NOTICE TO END TENANCY

You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

Analysis

Section 66 of the *Act* provides me authority to extend and change a time limit imposed by the *Act* and reads as follows:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

An extension of time will only be granted if the party has proof that an exceptional circumstance occurred that prohibited them from filing their application within the statutory timeframe.

In this case, the Tenant failed to provide any proof to substantiate her claim that she was unable to file her application in time.

Residential Tenancy Policy Guideline 36 sets out the following factors to consider when an application for more time is requested and requires the applicant to show that:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

In this case the Tenant filed her application 30 days after receiving the Notice, and 15 days after receiving the Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession.

In all the circumstances, I find the Tenant has submitted insufficient evidence to support a finding that she should be granted more time pursuant to section 66(1) of the *Act*. As her request for more time has been denied, her application to cancel the Notice is similarly dismissed.

Conclusion

The Tenant did not apply to dispute the Notice within the time required in section 47 of the *Act*, and her application for more time pursuant to section 66(1) is denied. In failing to apply on time, the Tenant is conclusively presumed under section 47(4) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. The Landlord must serve the Order of Possession on the Tenant and may file and enforce the Order in the B.C. Supreme Court as an order of that Court.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the Tenant's monetary claim. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. Accordingly, I exercise my discretion to dismiss the Tenant's monetary claim and I grant her leave to re-apply for this other claim.

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: April 27, 2016

Residential Tenancy Branch