



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNE CNC OLC

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;
- cancellation of the landlord's 1 Month Notice to End Tenancy for End of Employment (the 1 Month Notice) pursuant to section 48; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord's agent, SJ ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application.

The landlord testified that the 1 Month Notice to End Tenancy for Cause, with an effective date of December 31, 2016 ('the 1 Month Notice') was served to the tenant by way of Registered Mail on November 7, 2016. The tenant indicated during the hearing that there was no issue with the service of the 1 Month Notice, which she received on November 9, 2016. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

At the beginning of the hearing I had confirmed with both parties the applications before me. The tenant applied to cancel the landlord's 1 Month Notice for Cause, for an

extension of time to file her application for dispute resolution, and for an order for the landlord to comply with the *Act*, regulation, and / or the tenancy agreement. The tenant had also applied to cancel a 1 Month Notice for End of Employment, but as no such notice exists, and as the tenant did not confirm this part of her application, this part of her application is considered withdrawn. The landlord applied for an Order of Possession for cause if the tenant is not granted her application to cancel the 1 Month Notice.

Preliminary Issue—Tenant’s Application for an Extension of Time to File her Application for Dispute Resolution

The tenant filed her application for dispute on November 22, 2016, although the 1 Month Notice was received by her on November 9, 2016. The tenant has the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

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

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The 1 Month Notice was confirmed to have been received by the tenant on November 9, 2016, and she had filed for dispute resolution on November 22, 2016, thirteen days later. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant, in her application, stated that she did not have enough information as to her rights as a renter, and did not have enough information to “make a good formal decision”.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has not met the burden of proof to justify that there is an exceptional reason for the late filing of her application. Under these circumstances, I am not allowing her application for more time to make her application, and accordingly the tenant’s application to cancel the landlord’s 1 Month Notice is dismissed.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

Section 55(1) of the *Act* reads as follows:

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*

(a) the landlord's notice to end tenancy complies with section 52, and

(b) the director, during the dispute resolution proceedings, dismisses the tenant's application or upholds the landlord's notice.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenant has allowed an unreasonable number of occupants in the unit/site.
2. The tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. Put the landlord's property at significant risk

The landlord testified during the hearing that the tenant had allowed her boyfriend to live in the suite, even though that was not approved by the landlord. Other tenants have complained to the landlord about the noise caused by both the tenant and her boyfriend. The landlord also testified that the tenant and her boyfriend did not clean the rental suite, and they were observed to be burning an unknown object in a box. The landlord believed such actions put his property at significant risk.

The tenant testified that she was afraid to live alone after a previous break-in, and did not dispute the fact that her boyfriend had resided in the suite with her. She testified that she did fight with her boyfriend once, but they were not bad people.

The landlord requested an Order of Possession pursuant to the 1 Month Notice that was served to the tenant on November 7 2016 by way of registered mail.

The tenant requested an order for the landlord to comply with the *Act* and agreement as she maintains that she should be able to have her boyfriend attend the rental unit as a guest.

Analysis

Section 55(1) of the *Act* reads as follows:

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 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.*

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The tenant failed to make her application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to take the above actions within ten days led to the end of this tenancy on December 31, 2016, the effective date on the 1 Month Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by December 31, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

The landlord will be given a formal Order of Possession which must be served on 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.

As this tenancy has effectively come to an end, and the tenant and any occupants on the premises are required to vacate the rental suite, I am dismissing the tenant's application for an order allowing her to have guests visit her.

Conclusion

I dismiss the tenant's entire application for dispute resolution.

I find that the landlord's 1 Month is valid and effective as of December 31, 2016. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of 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: February 1, 2017

Residential Tenancy Branch