



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC FF
For the tenant: MT CNC

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause dated December 20, 2016 (the “1 Month Notice”), and to recover the cost of the filing fee. The tenant applied for more time to make an application to cancel a notice to end tenancy and to cancel the 1 Month Notice.

The landlord, a witness for the landlord who did not testify during the hearing, the tenant and counsel for the tenant attended the teleconference hearing. The hearing process was explained to the landlord and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence presented 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.

Issues to be Decided

- Has the tenant provided sufficient evidence to be granted more time to make an application to dispute a notice to end tenancy under the *Act*?
- If yes to the above, should the 1 Month Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

The landlord affirmed that 1 Month Notice was served on the tenant on December 21, 2016 which the tenant confirmed was posted to this door and received on December 21, 2016. The 1 Month Notice was submitted in evidence. The effective date on the 1 Month Notice is January 31, 2017. The tenant continues to occupy the rental unit. The landlord testified that money was accepted on January 26, 2017 for “occupancy” of the rental unit for February 2017 and that the landlord was not reinstating the tenancy and was seeking an order of possession.

The tenant testified that his argument for applying for an extension of time to make an application to dispute a notice to end tenancy is that he submitted a copy of the 1 Month Notice for a different dispute resolution hearing (the “earlier application”) and thought that the 1 Month Notice would be considered as a part of that earlier application which it was not. A file number was provided orally by the tenant of the previous dispute resolution hearing which has been referenced on the cover page of this decision for ease of reference. During the hearing, the application related to the file number was reviewed and it was confirmed that the earlier application did not include a request to cancel a 1 Month Notice as part of that earlier application for dispute resolution.

During the hearing, the tenant confirmed that the tenant’s application for dispute resolution requesting to cancel the 1 Month Notice was received by the Residential Tenancy Branch on January 13, 2017. The tenant testified that he is 75 years old and does not have a lot of spare time for disputes as he practices yoga, meditation and attends regular acupuncture appointments. The tenant stated that he did his “level best” at responding. The tenant requested that his age and personal circumstances be considered and that an extension be given versus applying a strict interpretation of the law.

During the hearing, the parties were unable to reach a mutually settled agreement regarding the matters before me. The tenant and the tenant’s counsel were placed in a sub-conference for two minutes during the hearing to consider a counter-proposal offered by the landlord, which ultimately the parties did not agree to.

The tenant requested permission to be placed in a sub-conference for a second time to discuss a “judicial review” which was denied as both the tenant and counsel were advised that they would be required to await my decision and that a dispute resolution hearing was not the appropriate venue to request time to discuss a potential judicial review application.

Analysis

Based on the documentary evidence and testimony provided by the parties, and on the balance of probabilities, I find the following.

Firstly, I will first deal with the tenant's request for more time to make an application to apply to dispute a notice to end tenancy. Section 66(1) of the *Act* applies and states:

Director's orders: changing time limits

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]*.

[my emphasis added]

The term "exceptional" is addressed in Residential Tenancy Branch Policy Guideline 36 Extending a Time Period (the "policy guideline"). The policy guideline reads as follows:

"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 very 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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- **the party did not know the applicable law or procedure**
- **the party was not paying attention to the correct procedure**
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

...

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times”

[reproduced as written with my emphasis added in bold]

Based on the above, I find the reasons provided by the tenant fail to meet the definition of an exceptional circumstance and therefore **I dismiss** the tenant’s request for more time to make an application to cancel a notice to end tenancy **without leave to reapply**. In reaching this finding I have considered that page two of the 1 Month Notice provides detailed instructions on how a tenant may dispute the 1 Month Notice under the section in bold and capital letters which reads “**INFORMATION FOR TENANTS**”. I find that by failing to comply with the detailed instructions supports that the tenant failed to exercise reasonable due diligence to dispute the 1 Month Notice and that his reasons constitute excuses and not exceptional circumstances.

In addition, I find that being 75 years old would not prevent the tenant from exercising reasonable due diligence by seeking the assistance of either an agent or counsel to dispute the 1 Month Notice on his behalf and I afford no weight to the tenant practicing yoga and meditation and attending acupuncture appointments as none of those reasons I find would constitute a reason for failing to dispute a 1 Month Notice.

Finally, I do not accept the tenant’s assertion that submitting a copy of the 1 Month Notice in evidence for an earlier application would meet the definition of an exceptional circumstance as I have confirmed that the earlier application did not include a request to cancel a 1 Month Notice. Rather, I find it is more likely than not that the tenant either did not pay attention to the 1 Month Notice details on how to dispute the 1 Month Notice or know the applicable law or procedure which have been bolded above as two reasons indicated in the policy guideline as reasons that might not constitute an exceptional circumstance.

Given the above, and having reviewed the 1 Month Notice, I find that it complies with section 52 of the *Act* and is therefore a valid notice to end tenancy, section 47(5) of the *Act* applies which states:

47 (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.

[reproduced as written with my emphasis added in bold]

Based on the above, I find that it is not necessary for me to consider the merits of the 1 Month Notice as the tenant failed to dispute the 1 Month Notice within the 10 day timeline required under section 47 of the *Act*. Based on the evidence before me, the tenant should have disputed the 1 Month Notice no later than December 31, 2016 which the tenant failed to do by applying on January 13, 2017. As a result, I find that section 55 of the *Act* applies which states:

Order of possession for the landlord

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.**

[reproduced as written with my emphasis added]

As the 1 Month Notice was not disputed within the timeline provided under the *Act*, I find that the tenancy ended on January 31, 2017 which is the effective vacancy date listed on the 1 Month Notice. Pursuant to section 55 of the *Act*, I find the landlord is entitled to an order of possession **effective February 28, 2017 at 1:00 p.m.** This date was used as the landlord confirmed having issued the tenant a receipt for money paid by the tenant for "occupancy" for the month of February 2017.

As the landlord's application was successful, I grant the landlord the recovery of their filing fee in the amount of **\$100.00**. Pursuant to section 67 and 72 of the *Act*, **I authorize** the landlord to retain \$100.00 from the tenant's \$400.00 security deposit in full satisfaction of the recovery of the cost of the landlord's filing fee. As a result, I find the tenant's \$400.00 security deposit is now reduced to \$300.00, due to the \$100.00 filing fee granted to the landlord.

Conclusion

The tenant's application is dismissed.

The landlord's application is successful. The landlord has been granted an order of possession effective February 28, 2017 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenant's \$4000.00 security deposit in full satisfaction of the recovery of the cost of the landlord's filing fee, leaving the tenant's security deposit balance at \$300.00.

The tenancy ended on January 31, 2017. The tenant has use and occupancy of the rental unit until February 28, 2017 at 1:00 p.m. as the landlord has accepted money from the tenant for occupancy of the rental unit until February 28, 2017 at 1:00 p.m.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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