



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding GREEN TEAM REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL, DRI, FF

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 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 1, 2017. The landlord's agent (the landlord) confirmed service in this manner. The landlord served the tenant with their late submitted documentary evidence package via email on February 23, 2017. The tenant confirmed receipt of the landlord's documentary evidence. Neither party raised any issues that prevented the hearing from proceeding. As such, I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

The tenant provided written details regarding her reason for more time to make an application outside of the tenant dispute period as she was distraught by the situation that she missed the hearing date information.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
 - a. The extension is agreed to by the landlord;
 - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

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 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.

In this case the applicant has stated that she was “distraught” over filing the original application to dispute the landlord’s notice and as a result did not see the notice of a hearing letter details to participate in the hearing.

It was clarified with both parties that as the tenant was not served with a notice of a rent increase that a dispute cannot be resolved in this forum. The tenant clarified that she was presented with a new fixed term tenancy with an increased rental rate to begin upon the completion of her current tenancy agreement. As such, this portion (DRI) of the tenant’s application is dismissed.

Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the 2 Month Notice?
If so, is the tenant entitled to an order cancelling the 2 Month Notice?
Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2016 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated January 26, 2016. The monthly rent is \$936.00 payable on the 1st day of each month. A security deposit of \$413.00 was paid.

Both parties confirmed that the landlord served to the tenant a 2 Month Notice to End Tenancy issued for Landlord's Use dated December 7, 2016 and sets out an effective end of tenancy date of February 28, 2017. The reason given for the notice is set out as:

The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord/owner clarified that the unit was being renovated to allow the landlord's daughter to occupy the rental premises.

Analysis

Pursuant to section 63 of the Act, an 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.

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The tenant agreed to withdraw her application.
2. The landlord agreed to withdraw the 2 Month Notice dated December 7, 2016.
3. Both parties agreed to mutually end the tenancy on April 31, 2017.

4. The landlord agrees to waive the payment of monthly rent for March 2017 and April 2017.

The parties agreed that these particulars comprise the full and final settlement of all aspects of their dispute for both parties.

I decline to make any order regarding the recovery of the filing fee as this dispute was resolved through mediated settlement.

Conclusion

The tenants' application is withdrawn. The landlord's 2 Month Notice is cancelled

The attached order of possession is to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement in April 31, 2017. The landlord is provided with this order in the above terms and the landlord should serve the tenant with this order so that it may enforce it in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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: March 01, 2017

Residential Tenancy Branch