



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT CNC MNR MNDC OL ERP RP LRE FF O

Introduction

The tenants submitted an Application for Dispute Resolution (the “Application”) seeking remedy under the *Residential Tenancy Act* (the “Act”). The tenants applied for the following remedies:

- More time to make an application to dispute a notice to end tenancy
- To cancel a 1 Month Notice to End Tenancy for Cause dated January 27, 2017 (the “1 Month Notice”),
- For a monetary order for the cost of emergency repairs,
- For money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement,
- For an order directing the landlord to comply with the *Act*, regulation or tenancy agreement,
- For emergency repairs to the unit, site or property for health or safety reasons,
- For regular repairs to the unit, site or property,
- For an order to suspend or set limits upon the landlord’s right to enter the rental unit,
- For recovery of the cost of the filing fee, and
- Other unspecified relief.

The female tenant and landlord A.B. (the “landlord”) attended the teleconference hearing. The hearing process was explained to the parties, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Both parties confirmed that they had received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing the tenant requested an adjournment as she claims that she did not have time to submit evidence due to a family court matter. The criteria for granting an adjournment are set out in the Rules of Procedure. The criteria that apply are:

1. the views of the parties;
2. whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1. Rule 1 notes that the objectives of the Rules of Procedure are to secure a consistent, efficient and just process for resolving disputes;
3. whether the adjournment is required to provide a fair opportunity to be heard, including whether a party has sufficient notice of the hearing;
4. the degree in which the need for an adjournment arises out of the intentional actions or the neglect of a party seeking the adjournment; the possible prejudice to each party.

After considering all of the criteria for an adjournment, and hearing from the landlord who opposed the tenant's request for an adjournment, the tenant was advised that I was denying her request for an adjournment as I find there would be a greater prejudice to the landlord due to a notice to end tenancy being the subject of this dispute and that the landlord had the onus of proof to provide sufficient evidence and that the tenant confirmed having received the landlord's documentary evidence. Furthermore, I find that a family court matter would not prevent the tenants from also dealing with this application and that a delay in filing an application would be a choice the tenants made. Given the above, the hearing continued without an adjournment being granted.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 1 Month Notice and for more time to make an application to cancel a notice to end tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 1 Month Notice, for more time to make an application to cancel a notice to end tenancy and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenants' application is **dismissed, with leave to re-apply**.

In addition to the above, throughout the hearing, the tenant was cautioned for interrupting the landlord and the undersigned arbitrator and continued to interrupt until the hearing concluded at 25 minutes.

Issues to be Decided

- Firstly, have the tenants provided sufficient evidence to support an extension of time to make an application to cancel a notice to end tenancy?
- Secondly, if sufficient evidence has been provided to support an extension of time to make an application to cancel a notice to end tenancy, should the 1 Month Notice be cancelled?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A three year fixed term tenancy agreement began on April 1, 2015. Monthly rent in the amount of \$1,000.00 is due on the first day of each month. The tenant continues to occupy the rental unit.

The tenant confirmed receiving the 1 Month Notice dated January 27, 2017 on January 28, 2017. The effective vacancy date listed on the 1 Month Notice is February 28, 2017. The tenant did not apply to dispute the 1 Month Notice until February 10, 2017 based on her online application on the original file. The parties confirmed that the 1 Month Notice was signed and dated and listed two causes on page two of the 1 Month Notice.

The tenant stated that her reason for wanting an extension of time to make an application to cancel the 1 Month Notice is that she and her husband had a family court date and that she did not have enough time to prepare. The tenant then stated that she attempted to submit her online application on February 7, 2017 but was unable to due to what she claims was technical issues. The tenant then stated that she was successful on February 8, 2017 but failed to submit any screen shots to support an application dated February 8, 2017. The tenant then stated that she had a medical condition that prevented her from applying earlier but confirmed that she did not submit any documentary evidence to support what that medical condition was and whether it could prevent her from applying to dispute a 1 Month Notice.

The landlord confirmed that money was paid for use and occupancy of the rental unit for the month of March 2017 and as a result, any resulting order of possession would not be effective until the last day of March 2017.

Analysis

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

Tenant's request for extension of time to make an application to cancel a Notice to End a Tenancy –The tenant confirmed that she received the 1 Month Notice on January 28, 2017. The tenant's online application as submitted is dated February 10, 2017. The 1 Month Notice states on page two of the 1 Month Notice, "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." As the tenant received the 1 Month Notice as of January 28, 2017, the tenth day would be Tuesday, February 7, 2017. Although the tenant claims she attempted to submit an application on the last possible day but had technical issues, the tenant failed to submit any documentary evidence to support her claim. The tenant did not file her online application until Friday, February 10, 2017 which is beyond the permitted 10 day timeline described in section 47 of the *Act*.

Section 66 of the *Act* applies and states that a time limit may be extended for exceptional circumstances and Residential Tenancy Branch Policy Guideline #36 – Extending a Time Period, indicates that a party not knowing the applicable law or procedure is not a considered "exceptional" circumstances to justify an extension of time to make an application to cancel a Notice to End a Tenancy. I have carefully considered the reasons as claimed by the tenant and find that the tenant has provided insufficient evidence to support an exceptional circumstance under section 66 of the *Act*. Based on the above, **I dismiss** the tenant's request for an extension of time to make an application to cancel a Notice to End Tenancy due to insufficient evidence.

Tenant's request to cancel 1 Month Notice – Further to the above, and as the tenant failed to submit an Application within 10 days of being served the 1 Month Notice on January 28, 2017, and in accordance with section 47(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on February 28, 2017, the effective vacancy date on the 1 Month Notice. Therefore, **I dismiss** the tenant's application in full as the tenant did not apply to dispute the 1 Month Notice within the permitted 10 day timeline under the *Act*.

I do not find it necessary to consider the two causes listed in the 1 Month Notice as a result.

Section 55 of the *Act* applies and 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.**

[My emphasis added]

Given the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I find that the landlord is entitled to an order of possession effective **March 31, 2017 at 1:00 p.m.** This date was used as it was confirmed that money was paid to the landlord for use and occupancy of the rental unit for March 2017.

Conclusion

The tenant's application is dismissed without leave to reapply. The tenancy ended February 28, 2017 and the tenant has paid for use and occupancy of the rental unit for March 2017.

The landlord is granted an order of possession effective March 31, 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.

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: March 15, 2017

Residential Tenancy Branch